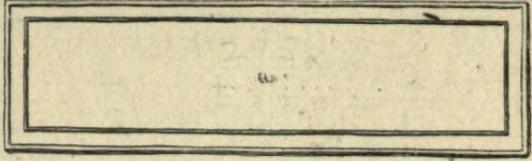
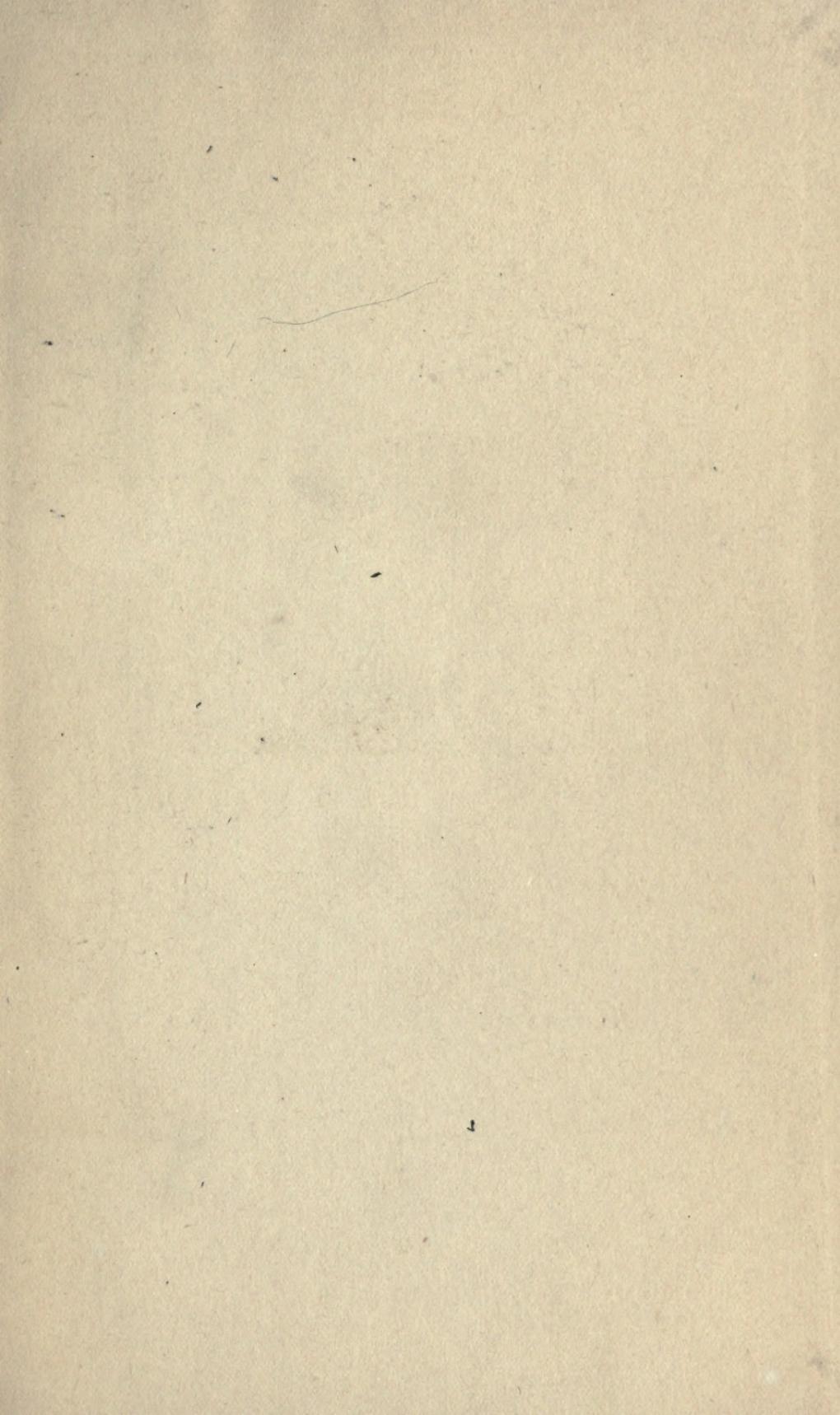
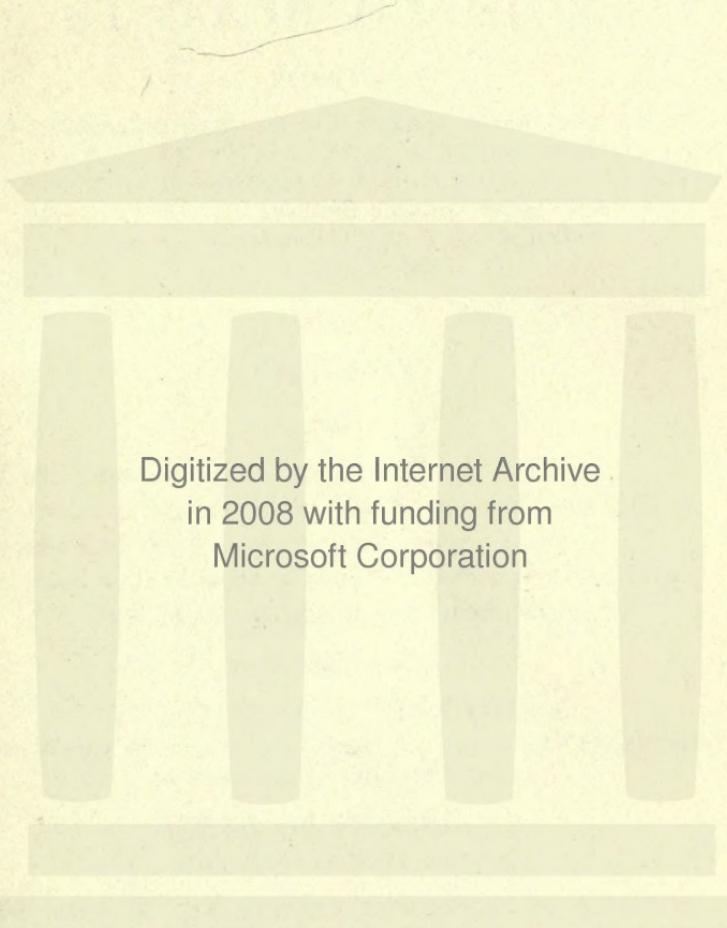


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THE
INHERITANCE TAX LAW
OF THE
STATE OF ILLINOIS,

BEING THE
ACT TO TAX GIFTS, LEGACIES AND INHERITANCES IN CERTAIN CASES, ETC., IN
FORCE JULY 1ST, A. D. 1895, AS AMENDED IN 1901, AND AS REVISED AND
EXTENDED UNDER THE TITLE OF AN ACT TO TAX GIFTS, LEGA-
CIES, INHERITANCES, TRANSFERS, APPOINTMENTS AND IN-
TERESTS IN CERTAIN CASES, ETC., IN FORCE
JULY 1ST, A. D. 1909,

WITH A

DIGEST

OF

All the Decisions of the Supreme Court of Illinois;
References to Opinions of the County Court of Cook County;
Decisions of the United States Supreme Court;
Decisions of the Courts of New York, Massachusetts, Iowa,
New Jersey, California and other States;

TOGETHER WITH THE

PRACTICE AND PROCEDURE

IN THE COUNTY COURT OF COOK COUNTY (INCLUDING THE COUNTY JUDGE,
AS SUCH, AND BEFORE APPRAISERS).

RULES OF PROCEDURE

ESTABLISHED BY STATE OFFICERS.

OPINIONS OF THE ATTORNEY GENERAL OF ILLINOIS.

COMPLETE TABLE OF CASES AND FORMS
AND
DECISION OF THE COURT OF CLAIMS.

BY

WALTER K. LINCOLN,
OF THE CHICAGO BAR.

INHERITANCE TAX ATTORNEY FOR COOK COUNTY.

475867
YGL

To Will
Ainsworth

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by

WALTER K. LINCOLN

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THE
INHERITANCE TAX LAW
DIGEST

CHAPTER I.

HISTORICAL—ORIGIN OF ILLINOIS LAWS—SUCCESSION—THE GENERAL SUBJECT.

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1. Historical.

The method of providing revenue by taxation of inheritances is of great antiquity. The idea of the tax is believed to have originated with the Egyptians.

It is known that Inheritance Tax Laws were estab-

lished in Rome as early as the year 6 A. D., and that in the time of Hadrian 117 to 138 A. D., the administration of such a law developed the practical question of allowing funeral expenses as a deduction from the taxable property, it being held that reasonable, and not extravagant sums, spent for burial and monument, were deductible. *The Inheritance Tax*, 2d ed., page 14, by Max West (Columbia University).

Gibbon's *Roman Empire*, Vol. 1, ch. 6, pages 158-9, gives the following account of Inheritance Tax legislation in Rome:

"When Augustus resolved to establish a permanent military force for the defense of his government against foreign and domestic enemies, he instituted a peculiar treasury for the pay of the soldiers, the rewards of the veterans, and the extraordinary expenses of war. The ample revenue of the excise, though peculiarly appropriated to those uses, was found inadequate. To supply the deficiency, the emperor suggested a new tax of five per cent. on all legacies and inheritances. But the nobles of Rome were more tenacious of property than of freedom. Their indignant murmurs were received by Augustus with his usual temper. He candidly referred the whole business to the Senate, and exhorted them to provide for the public service by some other expedient of a less odious nature. They were divided and perplexed. He insinuated to them that their obstinacy would oblige him to propose a general land-tax and capitation. They acquiesced in silence. The new imposition on legacies and inheritances was, however, mitigated by some restrictions. It did not take place unless the object was of a certain value, most probably of fifty or one hundred pieces of gold, nor could it be exacted from the nearest of kin on the father's side. When the rights of nature and poverty were thus secured, it seemed reasonable that a stranger, or a distant relation, who acquired an unexpected accession of fortune, should cheer-

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AMERICAN

fully resign a twentieth part of it for the benefit of the State.

Such a tax, plentiful as it must prove in every wealthy community, was most happily suited to the situation of the Romans, who could frame their arbitrary wills, according to the dictates of reason or caprice, without any restraint from the modern fetters of entails and settlements."

The Inheritance Tax Laws of Holland were instrumental in causing England to enact legislation of a somewhat similar character, and during the reign of George III, the younger Pitt made the tax one on the transfer of personal property and charged executors and administrators with the collection and payment.

The English law has since divided itself into a number of classifications, the whole system being generally known as "death duties."

Some of the colonies of Great Britain have adopted this system of taxation, two of which, Australia and New Zealand, secure a large part of their revenue from death duties.

2. The United States.

A Federal Inheritance Tax Law was passed by Congress in our early history, but was shortly repealed. It was not until 1862, by the War Revenue Act that the Inheritance Tax became a factor for the production of revenue. The rates were increased in 1864, and in 1866 a penalty was provided for the non-compliance of executors and administrators to report estates and property under their control to the Internal Revenue Collector. These laws were repealed in 1870.

The Spanish War revenue bill of 1898 provided for a tax on inheritances. This law was repealed in 1902, and at the present time there is no Federal Law providing

for such a tax. (See The Inheritance Tax, 2nd ed., 87 by Max West, for evolution of Inheritance Tax Legislation.)

3. The Inheritance Tax Law of Illinois. Its origin and Constitutionality. Nature of the Law in General.

The first Inheritance Tax Law in Illinois was approved June 15th, 1895, and went into force July 1st, 1895. Its provisions were largely taken from the New York Law, 1885, entitled—"An Act to Tax Gifts, Legacies and Collateral Inheritances, in effect June 30, 1885, as amended in 1887 and 1891.

The Act of 1885 created a tax on collaterals and exempted lineals, including in the exemption, certain other designated persons.

4. Constitutionality—New York Law of 1885.

The Court of Appeals in passing upon the constitutionality of the New York Act of 1885, held:

"It is not very important to determine in this case whether the Act of 1885 is to be regarded as imposing a tax upon property or upon the succession or devolution of property, by will or intestacy. In either case it is a special tax. In the one case it is a tax upon the particular class of property, and in the other case a tax upon the succession or devolution of property, or the right to receive property in the cases mentioned in the statute. Whether it be one or the other it is free from constitutional objection. It has never been questioned that the Legislature can impose a tax upon all sales of property, upon all incomes, upon all acquisitions of property, upon all business and upon all transfers. Taxes of a similar character were quite extensively imposed by the Acts of Congress passed during the late Civil War. If this be regarded as a tax upon property,

then it is free from constitutional objection if it be equally imposed and properly apportioned upon all the property of the class to which it belongs. A tax imposed for the general welfare upon a particular house, or the houses of a particular neighborhood, would be amenable to constitutional objection, but if imposed upon all the houses in the State, then it is a tax imposed upon all the property of that class, and is amenable to no objection." *Matter of McPherson*, 104 N. Y. 306; *Wallace v. Meyers*, 38 Fed. Rep. 184.

5. Act of 1885 Construed to Exclude Non-Resident's Property.

This law, as interpreted by the Court of Appeals, was not broad enough to include property in New York owned by a non-resident at death. *Matter of Enston*, 113 N. Y. 174.

6. Amendment of 1887 Designed to Cover Non-Resident's Property.

By the amendment of 1887, the New York Legislature added to the first section, among other things, the following: "Or if such decedent was not a resident of this State at the time of death" which property, "or any part thereof" shall be within the State, etc. The Court of Appeals in passing upon the scope of this amendment held it to apply to miscellaneous stocks and bonds of a non-resident held in New York at the time of death. It did not appear in this case where the corporations, which issued the stocks and bonds, were organized. (*Matter of Romaine*, 127 N. Y. 80.)

7. Tax Extended to Lineals.

The amendment of 1891 (New York) extended the tax to lineals, allowing an exemption of \$10,000.00.

8. Illinois Law of 1895 Taken from New York.

Generally speaking it may be said that Illinois adopted as its law of 1895, the New York Law of 1885 as amended in 1887 and 1891, substituting its own rates and exemptions, and certain other provisions appearing at that time to fit the general policy of the State.

9. Constitutionality of Illinois Law of 1895.

In *Kochersperger v. Drake*, 167 Ill. 122, the Law of 1895 was reviewed by the Supreme Court of Illinois and declared constitutional. The Court in deciding the questions involved, said:

“The question presented by this appeal involves the constitutionality of the act entitled “An Act to Tax Gifts, Legacies and Inheritances in certain cases, and to provide for the collection of same,” approved June 15, 1895.

The existence of the common law within the State of Illinois results from the provisions of Chapter 28 of the Revised Statutes, which declare that the common law of England, and all statutes of a general nature made prior to the fourth year of James I, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority. By that authority chapter 39 of the Revised Statutes, entitled “An Act in regard to the descent of property,” and chapter 148, entitled “An act in regard to wills,” were enacted, which in effect repeal the common law in reference to inheritance, and also repeal the statute enacted prior to the fourth year of James I in reference to devises. There is not in force in this State under Chapter 28 any law providing for the descent or devise of property. The laws of descent and the right to devise and take under a will within the State of Illinois owe their existence to the statute law of the State. The right to inherit and the right to devise being dependent on legislative acts, there is nothing in the constitution of this State which prohibits a change of the law with refer-

ence to those subjects at the discretion of the law-making power. The laws of descent and devise being the creation of the statute law, the power which creates may regulate and may impose conditions or burdens on a right of succession to the ownership of property to which there has ceased to be an owner because of death, and the ownership of which the State then provides for by the law of descent or devise. The imposition of such a condition or burden is not a tax upon the property itself, but on the right of succession thereto. To deny the right of the State to impose such a burden or condition is to deny the right of the State to regulate the administration of a decedent's estate. When, by the act of June 15, 1895, for the taxation of gifts, legacies and inheritances in certain cases, the legislature prescribed that a certain part of the estate of the deceased person should be paid to the treasurer of the proper county for the use of the State, it was in effect an assertion of sovereignty in the estate of deceased persons. Whether to be levied and determined as a tax or penalty, the principle is, that where one owning an estate dies, that estate is to be assessed in accordance with the provisions of the act and the tax to be paid for the right of inheritance. The amount reserved to the State from the estate of a deceased owner is not a tax on the estate, but on the right of succession.

By the provisions of the constitution of 1870, (Art. 9, Sec. 1), it is provided: 'The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents and persons or corporations own-

ing or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.' And Section 2 provides: 'The specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.'

Under these provisions of the constitution it is insisted that the levy of the succession tax which is required to be made by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, and that such law shall be uniform as to the class upon which it operates, is defeated by the provisions of the statute above quoted. That statute provides certain classes of property which were a part of an estate shall be exempt from taxation under these provisions, and when the legislature provides other classes of property, some of which shall pay one dollar per hundred, others two, others three and others four, and still others five, and again others six dollars per hundred, six different classes are created, under and by which a tax is levied by valuation on the right of succession to a separate class of property. The class on which a tax is thus levied is general and uniform, and pertains to all species of property included within that class. A tax which affects the property within a specific class is uniform as to that class, and there is no provision of the constitution which precludes legislative action from assessing a tax on that particular class. By this act of the legislature six classes of property are created heretofore absolutely unknown. It is those classes of property depending upon the estate owned by one dying possessed thereof which the State may regulate as to its descent and the right to devise. The tax assessed on classes thus created is absolutely uniform on the classes upon which it operates, and under the provisions of the statute is to be determined by valuation, so that every person and cor-

poration shall pay a tax in proportion to the value of his, her or its property inherited, and is not inconsistent with the principle of taxation fixed by the constitution, and is clearly within the sections of the constitution quoted. No want of uniformity with one living who owned property can be urged as a reason why the statute makes an inconsistent rule. No person inherits property or can take by devise except by the statute, and the State, having power to regulate this question, may create classes and provide for uniformity with reference to classes which were before unknown. * * *

We hold the act entitled 'An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of same,' approved June 15, 1895, to be consistent with the constitution of the State of Illinois."

10. Illinois Law of 1895 Held Constitutional by the United States Supreme Court.

The question of constitutionality of the Law of 1895 was determined in *Magoun v. Illinois Trust and Savings Bank*, 170 U. S. 283. The opinion of the Court with reference to the history, classification of exemptions, state's right to regulate succession, and constitutionality of the Law, is in part:

"Legacy and inheritance taxes are not new in our laws. They have existed in Pennsylvania for over sixty years and have been enacted in other states. They are not new in the laws of other countries. In *State v. Alston*, 94 Tenn. 674, Judge Wilkes gave a short history of them as follows: 'Such taxes were recognized by the Roman Law. Gibbon's Decline and Fall of the Roman Empire, Vol. I, pp. 163-164. They were adopted in England in 1780 and have been much extended since that date. Dowell's History of Taxation in England, 148; Acts 20, George III, C. 28; 45 George III, c. 28; 16 and 17 Victoria, c. 51; *Green v. Craft*, 2 H. Bl. 30; *Hill v. Atkinson*, 2 Merivale 45; such taxes are now in force generally

in the countries of Europe. (Review of Reviews, Feb., 1893.) In the United States they were enacted in Pennsylvania in 1826; Maryland, 1844; Delaware, 1869; West Virginia, 1887, and still more recently in Connecticut, New Jersey, Ohio, Maine, Massachusetts, 1891; Tennessee in 1891, chapter 25, now repealed by chapter 174, Acts 1893. They were adopted in North Carolina in 1846, but repealed in 1883. Were enacted in Virginia in 1844, repealed in 1855, re-enacted in 1863, and repealed in 1884'. Other states have also enacted them, Minnesota by constitutional provision.

The constitutionality of the taxes have been declared, and the principles upon which they are based explained in *U. S. v. Perkins*, 163 U. S. 625, 628; *Strode v. Commonwealth*, 52 Penn. St. 181; *Eyre v. Jacob*, 14 Grat. 422; *Schoolfield v. Lynchburg*, 78 Virginia, 366; *State v. Dalrymple*, 70 Maryland, 294; *Clapp v. Mason*, 94 U. S. 589; *in re Merriam's Estate*, 141 N. Y. 479; *State v. Hamlin*, 86 Maine, 495; *State v. Alston*, 94 Tenn. 674; *In re Wilmerding*, 117 Cal. 281; Dos Passos Collateral Inheritance Tax, 20; *Minot v. Winthrop*, 162 Mass. 113; *Gelsthorpe v. Furnell* (Montana), 51 Pac. Rep. 267. See also *Scholey v. Rew*, 23 Wall. 331.

It is not necessary to review these cases or state at length the reasoning by which they are supported. They are based on two principles: 1. Any inheritance Tax is not one on property, but one on the succession. 2. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation.

The second principle was given prominence in the arguments at bar. The appellee claimed that the power of the State could be exerted to the extent of making the State the heir to everybody, and the ap-

pellant asserted a natural right of children to inherit. Of the former proposition we are not required to express an opinion. Nor indeed of the latter, for appellant conceded that testamentary disposition and inheritance were subject to regulation. However, as pertinent to the subject, decisions of this Court may be cited.

In *U. S. v. Fox*, 94 U. S. 315, 320, a law of the State of New York confining devises to natural persons and corporations created under its laws was considered, and a devise of land to the United States was held void. The Court said:

‘The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. *McCormick v. Sullivant*, 10 Wheat. 202. . . . Statutes of Wills, as is justly observed by the Court of Appeals, are enabling acts, and prior to the statute of 32 Henry VIII there was no general power at common law to devise lands. The power was opposed to the feudal policy of holding lands inalienable without the consent of the lord. The English Statute of Wills became a part of the law of New York upon the adoption of her constitution in 1777; and, with some modification in its language, remains so at this day. Every person must, therefore, devise his lands in that State within the limitations of the statute or he cannot devise them at all. His power is bounded by its conditions.’

It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment,

and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection.

Two principles, therefore, must be reconciled in the Illinois Inheritance Law if it is to be sustained, the equality of protection of the laws guaranteed by the Fourteenth Amendment, and the power of the State to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification—of one based upon ‘some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection? Legislation, special in character is not forbidden by it, as we have seen. Treating mechanics as a class, and giving them a lien for the amount of their work, has been held reasonable. Charging a railroad corporation and not other corporations or persons with an attorney’s fee has been held unreasonable, yet the former would seem to be as much an exclusive favor as the latter an exclusive burden.

Of taxation, and the case at bar is of taxation, Mr. Justice Bradley said in the *Bell's Gap Railroad v. Pennsylvania*, 134 U. S. 232, and Mr. Chief Justice Fuller in *Giozzi v. Tierman*, 148 U. S. 657, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. The range of the State’s power was expressed by Mr. Justice Bradley as follows:

‘It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebted-

ness or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the People of the State framing their constitution'.

* * * There is, therefore, no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. Bearing these considerations in mind we can solve the questions in controversy.

There are three main classes in the Illinois statute, the first and second being based, respectively, on lineal and collateral relationship to the testator or intestate, and the third being composed of strangers to his blood and distant relatives. The latter is again divided into four subclasses dependent upon the amount of the estate received. The first two classes, therefore, depend upon substantial differences, differences which may distinguish them from each other and them or either of them from the other classes—differences, therefore, which 'bear a just and proper relation to the attempted classification'—the rule expressed in the *Gulf, Colorado & Santa Fe Railway v. Ellis*, 165 U. S. 150. And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates 'equally and uniformly upon all persons in similar circumstances.' We think the classification of the Illinois Law was in the power of the Legislature to make."

11. Amendment 1901—Illinois.

In 1901, the Act of 1895 was amended to extend exemptions to certain educational, religious, charitable and benevolent bequests, and also included a section (21½) intended to afford a remedy to quiet the question of taxability, other than by the method of appraisement.

12. Illinois Law in Force July 1st, 1909.

In 1909 the Legislature revised the Inheritance Tax Law, increasing rates and adding new provisions. Most of the provisions of the Illinois Law of 1909 were taken from the Transfer Tax Laws of New York, in force at that time.

13. Scope of the Law.

The State is interested as a beneficiary in every transfer of property by death, whether the transfer is effected by will, intestate laws, or by deed, grant, gift or transfer in the lifetime of the grantor or donor, as provided by Section 1, Laws 1909. *National Safe Deposit Company v. Stead*, 250 Ill. 584.

14. State's Interest.

"The State's interest is a vested interest equal in degree to any beneficiary and accrues at the death of decedent." *Re Graves*, 242 Ill. 212-216.

The California Court in estate of Stanford, 126 Cal. 112, described the State's interest as follows:

"* * * The Legislature * * * having determined that 95% of decedent's estate may go to his heirs and beneficiaries, and that 5% be retained to the state, it is too clear for argument that this 5% vested in the state at the same time that the 95% vested in the heirs or other beneficiaries".

15. Right to Take Property Is Regulated by the State.

The right to take property by devise or descent is not a natural right, but is a creature of the law. The Legislature can provide that the whole, or only a portion of decedent's property shall go to his heirs or beneficiaries. The Legislature has provided by law (Inheritance Tax

Law 1895-1909) that the State shall receive a portion of a decedent's property. *Kochersperger v. Drake*, 167 Ill. 122; *Magoun v. Ill. Trust & Savings Bank*, 170 U. S. 283; *Billings v. People*, 189 Ill. 472; *Re Graves*, 242 Ill. 212; *National Safe Deposit Co. v. Stead*, 250 Ill. 584.

16. Construction—In Favor of the Taxpayer.

In construing special laws the general rule is to favor the citizen as against the State. *Matter of Enston*, 113 N. Y. 174; 21 N. E. 87; 3 L. R. A. 464; *Matter of Vassar*, 127 N. Y. 1; 27 N. E. 394; *Matter of Stewart*, 131 N. Y. 274; 30 N. E. 278; *Matter of Fayerweather*, 143 N. Y. 114; 38 N. E. 278; *Matter of Harbeck*, 161 N. Y. 211; 55 N. E. 850.

17. When Against the Citizen.

This general rule, however, is not applicable to persons or corporations claiming exemption. The claimant must show wherein the statute provides the exemption. *Matter of Moore*, 90 Hun 162; 35 N. Y. S. 782.

18. Tax—Controlled by Statute in Force at Death of Decedent.

The rights of parties and the tax itself is governed by the statute in force at the time of that death which effects the transfer. *Matter of Sloane*, 154 N. Y. 109.

19. Intestate Laws—Meaning of.

"There are no laws of this State which are specifically designated as 'intestate laws', and we are called upon to determine what laws or system of laws were referred to under that appellation by the act in question (Illinois Act, 1895). The same term is employed in similar statutes in other states and we have no doubt the laws referred to are those laws of the state which govern the devolution of estates

of persons dying intestate and include all applicable rules of the common law in force in this state.” *Billings v. The People*, 189 Ill. 472.

20. Succession—Is Governed by the Law of Domicile.

In *Russell v. Madden*, 95 Ill. 485, it was decided:

“The doctrine is that the succession to personal property is governed by the law of the actual domicile of the intestate at the time of his death, no matter what was the country of his birth, or his former domicile or the actual situs of the property at the time of his death”.

In *Young v. Wittenmyre*, 123 Ill. 303, the Court, citing *Jenison v. Hapgood*, 10 Pick. 77, stated the rule to be that the *lex domicilii* and not *lex rei sitae* must govern in the distribution of the personal estate of a deceased person among his heirs or legatees, whether he died testate or intestate. Also see *re Swift*, 137 N. Y. 77.

21. Succession—Governed by Law of Domicile.

Succession is governed by the law of the domicile regardless of the tangible location of personal property. In *Frothingham v. Shaw*, 175 Mass. 59, the Court held on this question, as follows:

“But whatever the form of tax is, the succession takes place and is governed by the law of the domicile; and if the actual situs is in a foreign country, the courts of that country cannot annul the succession established by the law of New York (*Dammert v. Osborn*, 141 N. Y. 564). In further illustration of the question, of the extent to which the law of the domicile operates, it is to be noted that the domicile is regarded as the place of principal administration and any other administration is ancillary. * * *”.

22. Succession—Governed by Law of Domicile.

The property of a resident of New York, located without that State at the time of the owner's death, administered and distributed within that State, is chargeable with the transfer tax under Section 220, L. 1896. *Matter of Dingman*, 66 App. Div. (N. Y.) 228; *Matter of Greene*, 153 N. Y. 223.

23. Succession—Cannot be Changed by Compromise among Beneficiaries. Money Paid in Compromise not a Deduction

Where a compromise was made between the residuary legatees and a disinherited relative, whereby said relative, pursuant to an agreement with the residuary legatees, received from the executors, the sum of \$50,000.00, in consideration of refraining from contesting the validity of the will, said sum of \$50,000.00 was taxable to the residuary legatees and devisees; the disinherited relative did not succeed to said sum under the will, but took same by assignment from said residuary legatees and devisees. Said sum of \$50,000.00 is not a legal deduction from the estate of decedent to be subtracted before the Inheritance Tax is imposed. *Re Graves*, 242 Ill. 212; *Baxter v. Stevens*, 95 N. E. 854; *Re Sanford's Estate*, 133 N. W. 870 (Neb.)

24. Compromise of Will Contest—Does not Affect Law of Succession.

Frederick Cook died testate, February 17th, 1905, a resident of the State of New York, leaving him surviving a widow and an adopted child. By the 38th paragraph of his will, the residue of the estate was given to various nephews and nieces. When the will was offered for probate the widow and an adopted daughter filed objections

which raised an issue as to testamentary capacity. Pending the probate a compromise was arrived at which was effected by certain instruments executed by the widow and each of the residuary legatees, whereby, for a good and sufficient consideration, said residuary legatees assigned and transferred all their right, title and interest in and to the residuary estate of Frederick Cook, accruing to them by virtue of the provisions of paragraph 38 of his will, to the widow. Thereupon objections to the probate were withdrawn and the will was proved.

In an Inheritance Tax appraisement it was contended by executors that the widow succeeded to the residuary estate and that the nephews and nieces did not succeed to said estate and that the latter should not be taxed at a 5% rate. The Court held, that the compromise between the residuary legatees and the widow affected in no wise the laws of succession of the State of New York; that the nephews and nieces, as residuary legatees received the residuary estate under paragraph 38 of the will, and that the widow took said property by assignment from them. *Matter of Cook*, 187 N. Y. 253.

25. Courtesy—Does not Pass by Will or Intestate Laws.

Maria E. Green died intestate a resident of the State of New York, leaving her surviving a husband and no descendants. It was urged by the Comptroller that the husband took his right of courtesy by the intestate laws of the State of New York. The Court held:

“The words ‘intestate laws’ refer to statutes governing descent and distribution of a decedent’s property. That statute is the law’s will for the disposition of property when its owner dies without a will. Upon inspection to discover what interest it transfers, it is found that it does not transfer an

estate by the courtesy, but disclaims any effect upon such an estate. That is, it leaves it untouched as a matter that does not concern it, hence the taxing statute does not include it".

In short, the husband's right of courtesy does not pass by intestate laws, and therefore is not taxable. *Green's Estate*, 129 N. Y. S. 54; See *Matter Starbuck*, 137 App. Div. (N. Y.) 866.

26. General Revenue Law—Decisions under not necessarily in Point in Inheritance Tax Cases.

The taxable transfer law has no reference or relation to the general law * * *. While the object of both is to raise revenue for the support of the government they have nothing else in common. * * *. It (transfer tax law) proceeds upon a new theory of the right of the government to tax, and establishes a new system of taxation. It taxes the right of succession to property. All property having an appraisable value must be considered whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law but are taxable under the Inheritance Tax Law. *Re Knoedler*, 140 N. Y. 377; *People v. Griffith*, 245 Ill. 532.

27. Transfer Tax Act of 1892 (New York) not Retroactive.

Robert A. Forsyth died testate, November 25, 1873, transferring the sum of \$250,000.00 in trust, the income therefrom to be paid to his widow during her lifetime. At the death of the widow the trustees were directed to pay from said fund the sum of \$40,000.00 to the children

of Isabelle Little, a deceased sister, or the descendants of such sister as should be living at that time. Caroline W. Forsyth, widow of testator died October 26th, 1893, and an appraiser was appointed to assess a tax upon the succession to said fund of \$40,000.00 under the third subdivision, Sec. 1, ch. 399, L. 1892, which reads as follows:

“Such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this Act”.

The Court Held:

“In this case the legatees became beneficially entitled to their rights in the testator’s property at his death in the year 1873. At the time of that event, the transfer by the will of their beneficial interest occurred while they only became entitled to actual possession of the property at the death of the widow. The transfer of the beneficial interest having occurred before the passage of this or the previous acts (Inheritance Tax Acts), it is not subject to the tax under the act (1892) which law is not intended to be retroactive. To conclude that in this case the act was intended to be retroactive would be to extend its effect beyond the scope of the remainder and principal part of the act, which is not a necessary construction and is improbable”. *Matter of Forsyth*, 10 Misc. Rep. (N. Y.) 477.

28. Remainders Created Prior to Tax Law Are not Taxable by Subsequent Enactment.

Walden Pell, Sr., died testate a resident of the City of New York, April 14th, 1863, creating by will a life estate in all his property to his widow with remainders over at her death, in equal shares, to his nephews and nieces and the issue of any deceased nephew and niece,

together with one equal share to decedent's sister, Emma. The widow of decedent died December 20th, 1899, at which time all the estates in remainder came into actual possession and enjoyment of the beneficiaries under the will and codicil. The comptroller of New York asked for a tax upon the successions of the nephews and nieces, etc., which came into actual possession by the death of the widow under Chap. 76, Laws 1899, which reads as follows:

"All estates upon remainder or reversion, which vested prior to June 30, 1885, but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this Act, shall be appraised and taxed as soon as the person or corporation beneficially interested therein shall be entitled to the actual possession or enjoyment thereof".

The amendment of 1899 became a law March 14th, of that year and the life tenant died the following December. It was conceded that the remainders were controlled by this amendment if the same was a valid exercise of legislative power. The constitutionality of the law was not affected simply because it was retroactive but for the reason that it was both retroactive and impaired vested rights.

The Court held:

"The legislation of 1899, now under consideration, obviously preceeds upon a misapprehension of the effect of the absolute vesting of a remainder. Expectant future estates as defined in the statute expressly include all remainders, whether vested or contingent, and they are by statute descendible, devisable and alienable. This Court and the Supreme Court of the United States have held in numerous cases that the transfer tax is not imposed upon the property but upon the right of succession. It therefore follows that where there was a complete

vesting of a residuary estate before the enactment of the transfer tax statute, it cannot be reached by that form of taxation. In the case before us it is an undisputed fact this remainder had vested in 1863." *Matter of Pell*, 171 N. Y. 48; *Matter of Pell*, 60 App. Div. (N. Y.) 286, reversed.

29. When State Supreme Court Final on Matters of Taxation.

Cleveland Trust Co. v. Lander, 184 U. S. 111.

CHAPTER II.

PROPERTY WITHIN THE STATE—TRANSFERS TAXABLE— STATUTORY EXEMPTIONS—RATES OF TAX.

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171. Lineal Descendants — Children of Adopted Child.
172. Particular Rates of Taxation and Exemptions under the Illinois Law in Force July 1st, 1895.
173. Transfers Under the Illinois Law Effected Prior to July 1st, 1909—Rates and Rights of the Parties.
174. Illinois Law in force July 1st, 1909 — Rates and Exemptions.
175. Husband of a Daughter who died before Testator.
176. When Husband of Deceased Daughter is remarried.
177. Widow of Adopted son is "Widow of a Son."
178. Adoption—When Effected in Foreign State Entitles Beneficiary to Exemption.
179. Children of an Adopted Child are "Lineal" Descendants of decedent.
180. Child of Adopted child—When Taxable.
181. Relation of Parent to Beneficiary — Must be Clearly Shown.
182. Acknowledged Relation of Parent.
183. Parent and Child — Mutually Acknowledged Relation.
184. Children of Parent to whom Decedent stood in Relation of Parent — Stranger in Blood.
185. Children of Person to whom Decedent Stood in Relation of Parent are Taxable.
186. Act of 1909 (Illinois) Limits Exemption.
187. Both Parents must be dead—Stepchild a stranger.

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| 188. Grandmother not a "Lineal Descendant" — Taxable as Stranger. | 190. Contra. |
| 189. Second Class Beneficiaries— Uncle, Aunt, Niece or Nephew, or any Lineal Descendant of the same. | 191. Third Class — Strangers in Blood, etc.
192. Exemptions — \$500 a Limitation, not an Exemption.
193. Exemptions — \$500 a Limitation. |

**30. Section 1. Inheritance Tax Law of Illinois,
in Force July 1st, 1895.**

SECTION 1. All property, real, personal and mixed shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State, and all heirs, legatees, devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as herein-after directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case, the rate of tax shall be one dollar

on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: *Provided*, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

A revision and enlargement of this and other sections of the law of 1895 as amended in 1901 was effected by the Act to Tax Gifts, Legacies, Inheritances, Transfers, etc., in force July 1st, 1909, whereby the foregoing section was superseded by the following:

31. AN ACT to Tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in Certain Cases, and to Provide for the Collection of the Same, and Repealing Certain Acts Therein Named.

SECTION 1. In force July 1st, 1909. A tax shall be and is hereby imposed upon the trans-

fer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, in the following cases:

1. When the transfer is by will or by the intestate laws of this State, from any person dying, seized or possessed of the property while a resident of the State.

2. When the transfer is by will or intestate laws of property within the State and the decedent was a non-resident of the State at the time of his death.

3. When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this State, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this Act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this Act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing

to exercise such power, taking effect at the time of such omission or failure.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: *Provided, however,* such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: *And, provided,* also, that the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such deceased born in lawful wedlock. In every such case the rate of tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person, when the amount so received exceeds in amount the sum of one hundred thousand dollars, and one dollar on each one hundred dollars of the clear market value of such property received by each person when the amount so received is one hundred thousand dollars or less; and at and after the same rates, respectively, for every less amount: *Provided,* that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interest to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece or nephew or any lineal descendant of the same, in any such case the rate of such tax shall be four dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received exceeds the sum of twenty thousand dollars; and two dollars on every

one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received is twenty thousand dollars or less. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount; on all transfers of ten thousand dollars and less, three dollars; on all transfers over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all transfers over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; on all transfers over fifty thousand dollars and not exceeding one hundred thousand dollars, six dollars; and on all transfers over one hundred thousand dollars, ten dollars: *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

32. Transfer—Defined.

In defining the meaning of the word "transfer" under the Inheritance Tax Laws of New York 1892 Ch. 399, the Court said:

"It is certainly within the constitutional power of the Legislature to tax all property transferred by will, whether the motive of the testator be to make a gift or to pay a debt, and the language, absolutely unambiguous and free from saving clauses, which the Legislature employs, affords the best indication that the word 'transfer' in the statute is used advisedly and according to its ordinary legal signification, which is, that the owner of a thing delivers it to another with the intent of passing the rights which he has in it to the latter." *Matter of Gould*, 156 N. Y. 423.

33. Transfer—Rights and Rates Determined as of Death.

All rights and interests comprehended by the Inherit-

ance Tax Law are to be determined as of the time of that death which effects the transfer.

Ayers v. Title & Trust Co., 147 Ill. 42.

Matter of Graves, 242 Ill. 212.

National Safe Deposit Co. v. Stead, 250 Ill. 584.

Billings v. People, 189 Ill. 472.

Matter of Buckingham, 106 App. Div. (N. Y.) 13.

McCurdy v. McCurdy, 83 N. E. (Mass.) 881.

Re Howe, 86 App. Div. (N. Y.)

34. Transfer—Time of.

The date of the death of the decedent fixes the time when the transfer of title to a remainder is effected. The fact that uncertainty exists as to the person who will take such remainder is immaterial. *Matter of Sloane*, 154 N. Y. 109.

35. Transfer—Acceptance of Transfer is Necessary.

The motive of the transfer is not material. If the object of the bequest is to pay a debt, discharge a moral obligation, or benefit some relative for whom the testator entertains a strong affection, the transfer is effected by will, if the bequest is accepted and the State is entitled to a tax. *Matter of Gould*, 156 N. Y. 423.

36. Transfer—When a Widow Accepts Devise in Lieu of Dower.

By the will of Stuyvesant, his widow was bequeathed certain property in lieu of dower. She failed to renounce the will which provided for a devise to her of one-third of the residue. It was contended that she was entitled to dower, in addition to the testamentary provision. The Court held that the direction as to the

residuary estate was inconsistent with any intention on the part of the testator that the widow should receive dower in addition to the testamentary provision. That inasmuch as the widow accepted this property under the will she was taxable on said transfer by the will. Although it is the law of New York that dower is not taxable, on the ground that there is no transfer by will or intestate laws, yet if the party entitled to dower fails to elect and take her share of an estate as dower, but does in fact, take the property by will, such property is transmitted to her by the testamentary instrument and effects a taxable transfer. *Re Stuyvesant's Estate*, 131 N. Y. S. 197.

37. Transfer—Bequest to Pay a Debt.

In a codicil to the last will of Gould, appears the following:

“My beloved son, having developed a remarkable business ability and having for twelve years devoted himself entirely to my business, and during the past five years taken entire charge of all of the difficult interests, I hereby fix the value of said services at \$5,000,000.00, payable as follows, * * *”, specifying a sum in cash and the balance in securities. In an appraisement for taxation under the New York Transfer Act of 1892 it was held that the testator intended to discharge an agreed debt to his son. The son accepted the said sum for his services under the codicil, and such acceptance constituted a transfer taxable under the law of 1892. *Matter of Gould*, 156 N. Y. 423.

38. Trustee's Fees Joined with Annuity is Taxable Bequest.

The will of Otto Huber contained the following provision:

“I further direct that my executor and trustee be

paid from my estate the sum of Fifteen Hundred Dollars annually, together with the commissions allowed by law, as long as he shall act as such executor and trustee, the same to be received by him in full compensation for any and all services legal or otherwise, which he shall render my estate."

Held, that an acceptance of such provision was an annuity subject to the inheritance tax under Section 227 of the Transfer Tax Law of 1896, Chap. 908. *Matter of Huber*, 86 App. Div. (N. Y.) 458.

39. Transfer—Must be Something of Value—Worthless Account.

Decedent bequeathed his estate to his four children and widow. The appraiser fixed the net value of the estate at \$244,000.00. On appeal to surrogate by executor, the taxing order was modified by deducting from the above amount, an item of \$17,000.00 which appeared as an open account upon the books of the deceased against his son G. Warren Manning, one of the legatees, and who was insolvent.

The question arises whether this worthless account is to be deemed property transferred by will, within the meaning of the statute. The bequest to the son under the will was more than sufficient to pay it.

Held, that the item of \$17,000.00 does not represent property within a fair meaning of the statute. The tax is imposed on the shares taken by the beneficiary. This item would not add any property of value to the estate, and is not subject to tax. Affirming 59 App. Div. (N. Y.) 624. *Matter of Manning*, 169 N. Y. 449.

40. When the Imposition of a Tax Must be Postponed (Laws 1895).

When a beneficiary taking an interest in remainder

cannot be identified, or when the property limited cannot be measured or determined, the tax must be postponed until the beneficiary becomes known or the property determinable. *People v. McCormick*, 208 Ill. 437. Also see *Re Cooper*, 127 Pa. 435; *Re Roosevelt*, 143 N. Y. 120; *Re Hoffman*, 143 N. Y. 334; *Re Nieman*, 131 Pa. 346.

41. Remainder—When Contingent Cannot be Presently Taxed

People v. McCormick, (*supra*); *Billings v. People*, 189 Ill. 472.

42. Remainders—Are Vested When (Laws 1895).

Remainders limited to persons to be determined by the laws of descent, or when limited to a class are considered as vested. *Ayers v. Chicago Title and Trust Company*, 187 Ill. 42.

43. Remainder—Tax Payable at Testator's Death.

The tax on a remainder, whether vested or contingent, is due and payable at the time of the death of testator. Section 2 gives the remainderman the right to defer payment by giving a bond to secure the tax. *Ayers v. Chicago Title and Trust Company*, 187 Ill. 42 (Reviewed in *People v. McCormick*, 208 Ill. 437).

44. Remainders—Defeasible Estates not Taxable Until Indefeasible.

Clarissa E. Curtis died a resident of New York State while the Act of 1885 was operative. An appraiser was appointed under the collateral inheritance tax act of 1885 and by said appraiser's report, contingent interests were taxed. The will of decedent created a group of

trusts for the benefit of two daughters and two named grandchildren, each trust running for the life of the beneficiary with remainders over to such of the nephews and nieces of decedent as should be living at the time of the termination of the respective life estates, or, if such nephews and nieces did not survive, to their then living issue.

On an objection interposed to the immediate taxation of these remainders the Court of Appeals held:

"That the estates limited to the nephews and nieces were contingent; that it never was intended by the law to tax a theory having no real substance behind it. As was said in *Matter of Swift*, 137 N. Y. 86, the question of taxation is one of fact and cannot rest on theories or fictions."

Decided that contingent estates were not presently taxable under the law of 1885. *Matter of Curtis*, 142 N. Y. 219.

45. Remainders—Created Prior to Tax Legislation Are not Taxable.

John B. Seaman died testate in October, 1876. His will bequeathed a residue in these words:

"SIXTH: All the rest, residue and remainder of my estate, real and personal, I give, devise and bequeath to my executors, hereinafter named, in trust to apply and pay over the income of one equal undivided half part thereof to my said adopted daughter and niece, Elizabeth Seaman, during her natural life, and upon her decease I give, devise and bequeath said equal undivided one-half part of my estate so held in trust for my said adopted daughter and niece, to the children of my nephew, George A. Seaman, living at the time of her death, share and share alike.

SEVENTH: I direct and order my said executors hereinafter named to apply and pay over the income

of the other equal undivided half part of my estate so held in trust by them to my said adopted son and nephew, George A. Seaman, during his natural life, and upon his decease, I give, devise and bequeath the said equal undivided half of my estate, so held in trust for my said adopted son and nephew, to the children of my said nephew, George A. Seaman, living at the time of his death, share and share alike."

Both life tenants were living at the date of testator's death and both died in January, 1893. When the will took effect there were four living children of George A. Seaman, who still survive and who took into their possession the remainders upon the termination of the trust. No inheritance tax law had been passed when the will took effect, but the Act of 1892 was in force when the life tenants died and possession of the remainder passed to the four children. The question involved is, whether the vesting in possession which occurred after 1892 is a transfer or succession; then for the first time passing, and, taxable under the Act of 1892, or, if not then first occurring, is it made taxable by the explicit language of the statute. The Court held: "The right of the State attaches when the right of succession accrues. The succession in the remaindermen was effective at the time of decedent's death, viz: in 1876, and such successions are not taxable." *Matter of Seaman*, 147 N. Y. 69.

46. Dower and Curtesy—Not Taxable and Must be Subtracted from Property Chargeable Therewith.

A dower interest in real estate should be valued and deducted from the value of that property to which the dower is chargeable. The difference or balance is taxable. The value of the dower interest is not taxable.

Matter of Shields, 124 N. Y. S. 1003; *Matter of Riemann*, 87 N. Y. S. 731. *Green's Estate*, 129 N. Y. S. 54. *Re Starbuck*, 137 App. Div. (N. Y.) 866.

47. Dower—Is Taxable in Illinois under Act of 1895.

Albert M. Billings died testate, a resident of Chicago, on February 7th, 1897, leaving a large estate. By the will his widow took a life estate in the entire property. The remainder was limited as follows: To C. K. G., a second life estate in two-thirds of the remainder and to a grandson a second life estate in one-third of the remainder. The widow renounced the provisions of the will and elected to take her dower and legal share under the statute. This accelerated the second life estates to first life estates. It was contended that dower does not pass by the intestate laws of the State and that the Inheritance Tax Law of 1895, therefore, did not include a tax upon dower. The Court held that the words "intestate laws" as used in the statute do not refer to any specially designated laws but that intestate laws mean all laws or systems of laws which govern the devolution of estates of persons dying intestate and include all applicable rules of common law in force in this State, and that dower and the legal share of the widow passed by the intestate laws and was taxable under the Inheritance Tax Act of Illinois in force July 1st, A. D. 1895. *Billings v. People*, 189 Ill. 472. Also see *Re Sanford's Estate*, 133 N. W. 870 (Neb.).

48. Award.

This question has not been the subject of particular judicial consideration by the Illinois Supreme Court, but in *Billings v. The People*, 189 Ill. 472, the court re-

fers to award in commenting upon the taxation of dower.

In Re James Holden Estate, appraisement No. 2173, the County Court of Cook County held that award, like dower, passed by the intestate laws as defined in *Billings v. People, supra*; award being a share of decedent's property passing by death to the party entitled and in the amount as determined by statute, and therefore taxable.

49. Ante-Nuptial Contract—When Taxable.

Marshall Field was married September 5th, 1905. Prior to the marriage and in contemplation thereof the contracting parties entered into an ante-nuptial agreement, by which it was provided, among other things, that if Mrs. Field survived her husband she should receive \$1,000,000.00 out of the property and estate of Marshall Field in satisfaction of all claims, demands and rights which she might otherwise have in and to the property or estate of her husband as his widow. Field died in 1906 leaving Mrs. Field surviving. She presented a claim to the Probate Court for \$1,000,000.00, based upon the ante-nuptial agreement, which was allowed and paid to her by the executors of the estate. It was contended by the executors that the right of Mrs. Field to said \$1,000,000.00 did not pass to her by will or the intestate laws of the State, but was a legal debt due her under a valid contract made upon a valuable consideration and was not an inheritance. Counsel for the State contended that the ante-nuptial contract was a method of admeasurement of dower substituted by the parties for the method provided by law for determining the same and that said \$1,000,000.00 was paid to and received by said

widow as the full amount of her dower and other rights of inheritance. The Court said:

"Whatever may have been decided in other jurisdictions, it is well determined in this State that dower less the exemption provided by statute is subject to the inheritance tax (*Billings v. People*, 189 Ill. 472). It would seem logically to follow that if the provision made for Mrs. Field in the ante-nuptial contract was in lieu of and substituted for her dower and other rights, she would have had in the estate of Marshall Field, as his widow, it would also be subject to the inheritance tax. The Court said, in *Billings v. People, supra*: 'It will be noticed that neither dower nor any provision made in lieu of dower is exempted.'" *People v. Estate of Marshall Field*, 248 Ill. 147.

50. Ante-Nuptial Contract—Not Taxable.

An ante-nuptial contract creates a debt in favor of the widow. Debts are not taxable. *Matter of Baker*, 83 App. Div. (N. Y.) 530; 82 N. Y. S. 390; Aff'd 178 N. Y. 575.

51. Ante-Nuptial Contract to Make a Will—Transfer is by Will and Taxable.

George W. Kidd died December 3rd, A. D. 1901, possessed of a large estate. Prior to death he entered into an agreement with a Mrs. Dickinson whereby it was provided that in consideration of the marriage of Mrs. Dickinson with Kidd, and the payment to him of \$40,000.00, to be used in his business, said Kidd would adopt Grace G. Dickinson, daughter of Mrs. Dickinson, give her his name and make her his heir, etc. Decedent died without issue of the marriage and failed to transfer his property to Grace G. Dickinson as provided by the ante-nuptial contract. In a proceeding in the Supreme Court it was decreed that the contract was valid and that the property should pass to Grace G. Dickinson pursuant to the terms

thereof, viz.: as the heir of decedent. The Court held in an Inheritance Tax proceeding that the trustees under the will held the property for Grace G. Dickinson, and that she took the property as devisee under the will, and was, therefore, taxable. *Matter of Kidd*, 188 N. Y. 274.

52. Advancements—Taxable under Federal* Inheritance Tax Law.

Banks, Sr., in February, 1869, conveyed to his son a lot of land of the value of \$12,000.00. In 1865 Banks, Sr., executed his will, providing for legacies to his four sons. Said will provided: "All advances which may hereafter be made to either of my sons shall be charged against said sum as an advance, and shall bear interest from the time he shall receive the same." Testator died in 1871. An appraisement proceeding was had under the Federal Inheritance Tax Act of June 30th, 1864, Section 132 of which includes a tax on property transferred by "deed of gift or other assurance of title made without valuable or adequate consideration." The Court held: At the time the deed was executed the defendant had no proprietary interest in the property of his father. He had no expectant estate therein. The valuable and adequate consideration referred to in Section 132 must be held to mean money paid or some interest parted with or service rendered. This deed was within the statutory definition of a succession and a tax of \$120.00 was therefore assessed. *U. S. v. Banks*, 17 Fed. Rep. 322.

*Repealed.

**53. Community Property — California Statute
Taxing Same Does not Impair Obligation
of Contract.**

Moffitt was married in California in 1863 and there resided with his wife until his death in 1906. By the will of decedent his estate passed to his wife and children in the same proportions as if he had died intestate. Decedent's estate was subjected to an Inheritance Tax under the Law of 1905 (California). The single question presented was—"Whether the surviving wife's share of the community property is subject to this Inheritance Tax"? The California Supreme Court decided that the Inheritance Tax Law of 1905 did not violate the contract clause or due process clause of the constitution (153 Cal. 359). The case was then taken to the Supreme Court of the United States, which Court decided among other things, that the nature and character of the right of the wife in the community for the purpose of taxation was peculiarly a local question which was not reviewable in the Supreme Court of the United States. *Moffitt v. Kelly*, 31 Sup. Ct. Rep. 79.

54. Gifts Inter Vivos—When not Perfected.

Decedent instructed her attorney to invest \$20,000 for her daughter Marie and \$20,000 for her granddaughter. These investments were not made prior to the death of decedent, nor was there any written evidence thereof to establish that the gifts were effected. The Court held there was no delivery and that both sums were subject to the Inheritance Tax. *Re Myers Estate*, 129 N. Y. S. 194.

**55. Par. 1, Sec. 1. When the Transfer is by Will
or by the Intestate Laws of This State from
Any Person Dying Seized or Possessed of
the Property While a Resident of the State.**

56. Equitable Conversion—General.

The doctrine of equitable conversion is an outgrowth of the maxim of equity, that which ought to have been done is to be regarded as done. The doctrine of equitable conversion is recognized in equity only and is not given effect in courts of law. *Connell v. Crosby*, 210 Ill. 380; *Re Swift*, 137 N. Y. 77; *McCurdy v. McCurdy*, 83 N. E. 881; *Matter of Sutton*, 3 App. Div. (N. Y.) 208.

57. Equitable Conversion not Applicable to Subject Property to Taxation.

William Drury died a resident of Illinois and by his will did, among other things, bequeath the residue of his property, both real and personal, to his wife, for and during her natural life and at her death the property remaining to be converted by the trustee into money so as to divide the fund into one hundred (100) parts of equal amounts. Said trustee was directed to pay nine of such parts to specified legatees and devote the remaining ninety-one hundredths to founding "The William and Vashti College". Decedent left neither child, children nor descendants thereof surviving. The widow renounced the will and elected to take under the law. Said decedent died seized of real estate in Illinois, Kansas, Colorado, Nebraska and Texas. It was sought to subject not only the real estate in Illinois and all the personal property, but also the real estate outside of Illinois to taxation under the Inheritance Tax Law in force July 1st, 1895. The Court held:

"The will directs the conversion of the real estate into money for the purpose of creating a fund to be devoted to the establishment of the college, and it is argued that under the doctrine of equity the land is to be regarded as converted into personality and

it is urged that the bequest of the proceeds of the sale of the real estate is subject to the tax as being personalty. The doctrine of equitable conversion is an outgrowth of the maxim of equity that in a court of equity that which ought to have been done is to be regarded as done. The doctrine of equitable conversion is recognized in equity only and is not given effect in courts of law. (7 Am. & Eng. Ency. of Law, 2nd Ed. 465.) It cannot be applied in proceedings for the collection of inheritance or succession tax. *In re Swift's Estate*, 32 N. E. 1096. * * *, *Connell v. Crosby*, 210 Ill. 380-390.

58. Personal Property—Testamentary Direction to Convert Real Into Personal Property.

Decedent Abendroth directed by will that his real estate be converted to personal property, and bequeathed his daughter a share of the proceeds.

The daughter survived but died before the conversion. In an appraisement of the daughter's estate, the Surrogate held that she died possessed of a share in real estate owned by Abendroth.

The Appellate Division reversing this holding, said: The daughter died possessed of a right to compel a conversion and distribution. The test is whether the property would pass under the statute of distributions or descent. The property became in equity personal property and so passed by the daughter's will. *Matter of Mills*, 67 N. Y. S. 956; 32 Misc. Rep. (N. Y.) 493.

59. Property Physically Situate at Domicile of Owner.

Property, real and personal, and all interests in or evidences thereof situate at the domicile of the owner is within the jurisdiction of the taxing state, subject to its succession laws, and taxable. *Connell v. Crosby*, 210 Ill. 380; *People v. Billings*, 189 Ill. 472.

60. Leasehold Interest.

A leasehold interest in land is personal property and taxable. *Estate of Althause*, 63 App. Div. (N. Y.) 252, aff'd 168 N. Y. 670.

61. Domicile within the State—Chattels without the State.

Personal property physically situate in the State of New Jersey, at the time of the death of the owner, who was domiciled in New York, passes by the succession laws of New York, and is taxable in that State. *Re Swift*, 137 N. Y. 77; 32 N. E. 1096; 18 L. R. A. 709.

62. Property in Foreign State—Taxable at Domicile of Decedent.

The personal property of a resident decedent located without the domiciliary state is taxable under the succession laws of the domicile. *McCurdy v. McCurdy*, 83 N. E. 881.

63. Personal Property—Share in a Joint Stock Association Owning Real Estate.

Decedent died August 12th, 1891, a resident of New York, possessed of 46 shares of a joint stock association. Said association was formed in 1872 and the articles of said association provided, among other things, as follows:

“All the property, real and personal and all the goods and chattels, choses and rights in action and credits of every name and nature, with the evidence thereof, including the good will of its business of the association heretofore existing, are put in by the undersigned, who are the owners thereof and constitute the value of the shares of the association, etc.”

Under the Inheritance Tax Act of 1885, as amended in 1887, real property was exempt from taxation and it was contended by the comptroller that the shares of the decedent in said stock association were personal property and not real estate.

Held, that said stock association was not a corporation, but, that as to the nature of the shares of stock issued, the same principles of law are to be invoked that apply to a corporation. That such association is an entirety and that the shares of stock therein are personal property and subject to taxation. *Matter of Jones*, 172 N. Y. 575; 65 N. E. 570.

64. Life Insurance—Payable to Legal Representatives or Assigns.

Where the life insurance of a decedent is made payable to his administrators, executors, or assigns, or to his legal representatives, such insurance is property owned by decedent at the time of death and is taxable under the Law of 1885, as amended in 1887 (N. Y.). *Matter of Knoedler*, 140 N. Y. 377; 35 N. E. 601.

65. United States Bonds—When not Taxable.

The Legislature may subject the succession to United States bonds to a tax. However, under the Transfer Tax Act of 1892, Ch. 399, which defines the meaning of the words "estate" and "property" and limits the assessment of a tax to such property over which the State has jurisdiction, United States bonds are not taxable, as they are without the meaning and definition of Paragraph 22 of said Law. *Matter of Sherman*, 153 N. Y. 1; *Matter of Sherman*, 15 App. Div. (N. Y.) 628, aff'd.

66. United States Bonds—When Taxable.

Decedent died October 24th, 1898, possessed of United States bonds which were issued under the Act of July 14th, 1870, and which said Act provides for the exemption from taxation as follows: "From taxation in any form by or under State, Municipal or Local Authority". Each bond contains a clause to such effect. The Court held: Prior to the Transfer Tax Act of 1892 United States bonds were taxable. *Matter of Howard*, 5 Dem. 483; *Matter of Carver*, 4 Misc. Rep. 592; *Matter of Twigg's Estate*, 15 N. Y. S. 548; *Matter of Whiting*, 2 App. Div. (N. Y.) 590. And this was the view taken by apparently the only Federal Court that has passed on the question (*Wallace v. Myers*, 38 Fed. Rep. 184, cited with approval in *U. S. v. Perkins*, 163 U. S. 625, 629). By the Act of 1898 (New York) Ch. 88, the words which the Court of Appeals in *re Whiting* and *Sherman ubi supra* construed as indicating an intention not to tax bonds, were omitted from the section in question. Bonds were held taxable. *Matter Plummer*, 30 Misc. Rep. (N. Y.) 18, aff'd *Plummer v. Coler*, 178 U. S. 115.

67. United States Bonds—When Taxable.

"It is lawful for the State to withhold altogether the privilege of acquiring property within its dominion by will or inheritance, whether the property consists of government bonds or anything else. It is lawful for the Legislature to annex any conditions to the privilege which may seem expedient and do not conflict with the organic law of the State or the constitution or laws of the United States (*Mager v. Grima*, 8 How. 490)." *Wallace v. Myers*, 38 Fed. Rep. 184; *Strode v. Commonwealth*, 52 Pa. 181.

68. Par. 2, Sec. 1. When the Transfer is by Will or Intestate Laws of Property within the State and the Decedent Was a Non-Resident of the State at the Time of His Death.

69. Non-Resident's Property Situate in New York not Taxable under Act of 1885.

Before the amendment of 1887, property within New York passing by will or the laws of intestacy from a nonresident decedent was not taxable. *Matter of Ens-ton*, 113 N. Y. 174; *Matter of Tulane*, 51 Hun 213.

70. Property within the State—When Taxable.

Romaine died intestate in September, 1888, domiciled at Petersburg, Virginia. At the time of his death he was the lessee of a safe deposit box in New York which contained securities consisting of stocks and bonds of different corporations and a mortgage upon real estate in New York City, as well as several pass books showing deposits by him in various savings banks in the same city. It did not appear whether said stocks and bonds were issued by foreign or domestic corporations. Letters of administration were issued upon his estate by the surrogate of the County of New York in October, 1888, and subsequently thereto an appraisement proceeding was had and all of said assets taxed under the Inheritance Tax Act of 1885, as amended in 1887.

The Court held:

“The appellant further contends that the property in question was not ‘within this state’ according to the true meaning of the statute, and the contention is supported by the argument that it would be unreasonable to tax money found upon the person of a nonresident who died while travelling in this state. We should hesitate before applying the

statute to any property casually brought into the State for a temporary purpose, as by a visitor or traveller, but the record before us does not present such a case. It might well be held that such property, although literally 'within this state', was not here in the sense meant by the statute, on account of the transitory and accidental character of its presence and the immediate custody of the owner. (*Herron, Treasurer, v. Keeran*, 59 Ind. 472, 476.) Where, however, the money of a nonresident is invested in this State, as it was by Mr. Romaine in the bonds and mortgage in question, and in the deposits made by him in the savings banks, or where the property of a nonresident is habitually kept, even for safety, in this State, we think that the statute applies both in the letter and spirit. Such property is within this State in every reasonable sense, received the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident. We think that a fair construction of the Act permits no distinction as to such property, based simply upon the residence of the deceased owner. We have nothing to do with the policy of the statute, as our duty is discharged when we declare its meaning and apply it to the case in hand. That duty we discharge in this instance by adjudging that succession to the personal property in question, lately belonging to Worthington Romaine, a nonresident intestate, but invested or habitually kept by him in this State, is taxable under the Collateral Inheritance Act, insofar as it passed to persons not excepted from its provisions". *Matter of Romaine*, 127 N. Y. 80.

71. Property within the State—Ancillary Administration Cannot be Invoked to Increase Tax. Mortgage Deducted.

Decedent died a resident of New Jersey seized of real estate situated in the State of Massachusetts, which was subject to a mortgage of \$120,000.00, payable to the Cambridge Savings Bank of Massachusetts. Decedent also

left personal estate in Massachusetts of the value of \$9,000.00. The question involved was whether the Collateral Inheritance Tax Act shall be computed upon the value of the property without deducting, the mortgage or upon the value of the equity. It was also contended that ancillary administration in Massachusetts could be had whereby property from the domiciliary could be brought into Massachusetts to pay the indebtedness. Held, that the tax was assessable on the equity; that ancillary administration could not be invoked to bring in property for the purpose of paying the indebtedness in Massachusetts. *McCurdy v. McCurdy*, 83 N. E. (Mass.) 881.

72. Real Estate—United States and Other Bonds Cash and Notes within the State.

One Winslow died testate a resident of the State of New York, the owner of real estate and personal property situate in the State of Massachusetts. The personal property consisted of cash, municipal, railroad and United States bonds. One block of bonds was issued by the City of Zanesville, Ohio; another by the State of New Hampshire. One of the questions involved was whether the real and personal property in Massachusetts was taxable under the Inheritance Tax Laws of that State. The Court held:

“Much discussion has been had in other Courts under statutes somewhat like ours, in regard to stocks, bonds, promissory notes, and other similar property. The Court of Appeals in New York, in a very recent case, held that stocks in local corporations, and negotiable bonds found within the State, belonging to the estate of a nonresident decedent, are subject to a succession tax. *In re Morgan*, 150 N. Y. 35. *In re Houdayer*, 150 N. Y. 37. The same doctrine is held in well considered cases in Mary-

land and North Carolina. *State v. Dalrymple*, 70 Md. 294. *Alvany v. Powell*, 2 Jones Eq. 51. It has been held that the statute in Pennsylvania was ‘intended to embrace only personal property of a tangible nature, actually situated or used for business purposes within the commonwealth, and not to mere certificates of indebtedness, such as government bonds, whose situs necessarily follows the owner’s domicil’. *Orcutt’s appeal*, 97 Penn. St. 179, 186. In England it has been decided that succession duties under the St. 16 & 17 Vict. c. 51, are not payable on legacies of personal property in England, given by the will of a testator domiciled abroad. *Wallace v. Attorney General*, L. R. 1 Ch. 1. In this decision the Court followed and applied the rule stated in *Thomson v. Advocate General*, 12 Cl. & F. 1, in regard to duties on legacies under the St. of 36 Geo. III c. 52. But probate duties under the St. of 55 Geo. III c. 184, are payable upon property belonging to estates of nonresident decedents like that in the case before us. *Fernande’s case*, L. R. 5 Ch. 314. *Attorney General v. Bouwens*, 4 M. & W. 171. The language of our statute is too clear to admit of a doubt that such property as that to which we have referred was intended to be covered by it.” *Callahan v. Woodbridge*, 171 Mass. 595.

73. Stocks and Bonds of Domestic Corporations Taxable in Illinois—Stocks and Bonds of Foreign Corporations not Taxable (Laws 1895).

Sanford died testate, October 28th, 1906, domiciled in the State of New York. During the last fourteen years of his life he spent considerable time in Chicago, where he stayed at the home of his sister. Decedent’s will was admitted to probate in Cook County on petition of said sister, and was also probated in the State of New York. Said sister qualified as one of the executors under his will. The decedent maintained a safe deposit box in

the City of Chicago for fourteen years previous to his death and there was found therein at the time of his death stocks and bonds of Illinois corporations and stocks and bonds of foreign corporations. This property was listed in the inventory of the Illinois executor and distributed to the beneficiaries under the will, by order of the Probate Court of said State. It was contended by The People that both stocks and bonds of foreign and domestic corporations were taxable, first, because they were situate in the State for safekeeping, and second, because they were administered upon within the jurisdiction of this State. On an appeal to the Supreme Court, it was held:

“The law under which the tax was here imposed went into force on July 1st, 1895. The first section of that law, so far as it applies to the question now under discussion, reads * * *. It is earnestly insisted by counsel for appellees (executor) that none of the personal property of decedent found in the State is subject to tax as, under a fair construction of this statute, it did not pass under the laws of this State or under a will operative by reason of such laws. We cannot assent to this view. The provisions of our statute above set forth are a substantial copy of the New York statute of 1885 as amended in 1887. Previous to the adoption of the statute in this State the highest Court of New York has construed the statute of that State as applying to estates of nonresident decedents. (*Re Romaine*, 127 N. Y. 80; *re Enston*, 113 *id.* 174; *re James*, 144 *id.* 6), * * *. The construction of the New York statute of 1887 by the Courts of that State is in entire harmony with the spirit and policy. The Legislature of Illinois has recently passed an act revising the entire Inheritance Tax Law (Hurd’s Stat. 1909, p. 1897), the first section of which is practically a copy of the New York Law of 1892, so far as it affects any question raised or urged in this case. Under the construction given to said New York Law of

1892 by the Courts of that State, all of the personal property of decedent found in the safe deposit vault in this State would be subject to the payment of inheritance tax under the law now in force in this State, except the stock of foreign corporations. This is conceded by counsel for appellees. Furthermore, this Court and the Supreme Court of the United States have stated that our statute of 1895 applied to the property of nonresident decedents. *Billings v. People*, 189 Ill. 472; *Eidman v. Martinez, supra.* * * *. In the *Gibbs estate*, 83 N. Y. S. 53, the Appellate Division of that State held in 1903 that the bonds of a foreign corporation, left on deposit with a bank in New York at the time of the nonresident's death were not subject to tax. This decision was affirmed by the Court of Appeals in 176 N. Y. 565 (no opinion)."

The Court held the Gibbs case, although decided after July 1st, 1895, was persuasive as evidencing a policy of law that foreign bonds kept in the State by a nonresident were not taxable under the Inheritance Tax Act in force July 1st, 1895. The foreign stocks were held not taxable. But all bonds and stocks of domestic corporations were decided to be taxable. *People v. Griffith*, 245 Ill. 532.

74. Stock of Domestic Corporations—Owned by Non-Resident Decedent.

When certificates of stock of a New York corporation owned by nonresident decedent are within the State of New York, said stock is taxable. *Matter of James*, 144 N. Y. 6.

75. Stock and Bonds of a Domestic Corporation —Non-Resident Owner. Held as Collateral.

Stocks and bonds of New York corporations owned by a nonresident when the certificates and bonds were with-

in the State of New York, are taxable. When such property is held as collateral it may not be taxable. *Matter of Pullman*, 46 App. Div. (N. Y.) 574.

76. Stock—Certificates and Owner's Residence Without Taxing State.

Decedent died a resident of Kansas. At the time of his death he had \$10,800.00 in cash deposited with the State Savings Bank of Council Bluffs, Iowa, and owned 25 shares of stock of said bank, which was represented by two certificates in the possession of the decedent in Kansas at the time of death. In an appraisement proceeding under the Laws of Iowa to assess a tax on the cash and the shares of stock, the Court held: The right which a shareholder has in a corporation, by reason of his ownership of shares is a right to participate, according to the amount of his stock in the surplus profits of the corporation on division, and ultimately on its dissolution, in the assets remaining after payment of debts. It follows that the shares of stock involved represent an interest in the earnings and property of the corporation. A certificate is not stock itself, but a representation thereof. A share of stock is personal property, but may represent an interest in real estate. The decedent owned an interest in the property of the bank and such interest is property within this State and is taxable. *Re Culver's Estate*, 123 N. W. (Iowa) 743. See *Matter of Bronson*, 150 N. Y. 1.

77. Stock—Decedent a Non-Resident and Certificates Without the Taxing State.

Decedent died testate a resident of Massachusetts, possessed of shares of stock in the Boston & Maine, and Fitchburg Railroads, the certificates of which were in

Massachusetts at the time of decedent's death. The Boston & Maine Railroad operated through and was incorporated in more than one State. In an appraisement under the laws of New Hampshire, the Court held the shares of stock of a domestic corporation, the certificates of which were at the domicile of the nonresident owner at the time of death, represented property in New Hampshire which was subject to the Inheritance Tax. *Gardiner v. Carter*, (N. H.) 69 Atl. 939.

78. Stock—Certificates and Owner's Residence Without the Taxing State—Taxable.

A resident of the State of Connecticut died testate the owner of shares of stock in a New York corporation, the certificates of which were at the domicile of the owner at death. Held, to be taxable in New York under the Transfer Tax Laws of 1896, Ch. 908, Art. 10, as amd. (*Matter of Bronson*, 150 N. Y.; *Matter of Fitch*, 160 *id.* 87; *Matter of Bushnell*, 73 App. Div. (N. Y.) 325.

79. Situs of Stock for Taxation.

“The share certificates which the testator held represented the interests which he possessed in the corporations which issued them, and the legal situs of that species of personal property is where the corporation exists or where the share holder has his domicile.” *Matter of James*, 144 N. Y. 6-12.

80. Stock of New Jersey Corporation—Not Taxable When Owner Dies Non-Resident.

Shares of stock of a New Jersey corporation owned and held by a nonresident without the State of New Jersey at the time of the death of said owner, are held to be liable to an inheritance tax in New Jersey under Act approved May 15th, 1894. The decision following the

New York cases, as well as the Massachusetts and the other decisions which base the tax on the nature and character of the shares of stock. *Nielson v. Russell*, 69 Atl. (N. J.) 476. The Court of Errors and Appeals, in reversing the case reversed the decision and said in part:

"Our Act was modeled after the New York Act of 1885 (Laws 1885, P. 820, C. 483, Sec. 1), and if we had made no change in that Act, we should be held upon well settled principles to have adopted with the Act the construction previously placed thereon by the New York Courts in the case of *Enston's will*, 113 N. Y. 174; 21 N. E. 87; 3 L. R. A. 464. In fact, however, we modified the language of the New York Act by inserting at the beginning of the clause the words 'all property' in place of the mere relative 'which' and by adding the words 'inheritance, distribution, bequest, devise'. We are not, therefore, concluded by that decision. * * * *

* What is to be taxed, therefore, as far as the present case is concerned is a transfer by bequest from Mills to his legatees; or, to use the language of Mr. Justice Holmes, in *Blackstone v. Miller*, 188 U. S. 189, it is the singular succession of the legatee, not the universal succession of the executors. That this is the true construction of the Act is indicated further by the provisions of Section 6 (Gen. St. 1895, P. 3341, pp. 268) authorizing the executors to deduct the tax from the legacy or property for distribution. The tax is not a general charge against the estate, but a charge upon the legacies. * * * * The question recurs whether the succession of the legatees in the present case was meant to be taxed. This succession is a succession under the English law by which the validity and amount of the bequest must be determined. By that law, as well as by our own title to a legacy is not complete and perfect until the executor has assented, and he ought not to assent until creditors are satisfied. This assent must, of necessity, be the assent of the executors at the domicile. They alone can ascertain whether the es-

tate is solvent or insolvent. * * * * * The succession to the legacy is complete only in a foreign jurisdiction and it would certainly be anomalous to tax that succession here. The case differs from those arising under the New York Act of 1892 and statutes modeled thereon which assume to tax the transfer of property within the jurisdiction. Under those statutes it is the situs of the property which justifies the taxation of transfer. Our statute of 1894 does not undertake a tax on transfers of all property within our jurisdiction, but only transfers by inheritance, distribution, bequest or devise. In this respect our statute differs also from the Maryland Act which was before the Court in *State v. Dalrymple*, 70 Md. 294; 17 Atl. 82, 3 L. R. A. 372, where the Act as construed by the Court imposed a tax upon all estates, real, personal and mixed, money and public and private securities, etc., being in the State. The Massachusetts cases are not in point for a like reason." *Neilson v. Russell*, 71 Atl. (N. J.) 286.

81. Stock—Certificates and Owner's Residence Without Taxing State.

Shares of a New Jersey corporation owned by a non-resident of that State at the time of his death, the certificates representing said shares being located at the domicile of said decedent at death, are taxable under the Inheritance Tax Law of 1894 (P. L. 1894, p. 318, Par. 1). *Re Delano's Estate*, 69 Atl. Rep. (N. J.) 482.

82. Stock—Decedent a Non-Resident—Certificates Without the Taxing State—Sole Administration in Foreign Jurisdiction and Closed Before Tax Paid in New York.

Emily Fitch died testate a resident of Massachusetts in July, 1894. The only administration had was in Connecticut and the executor was discharged before the tax was paid in New York on the transfer of shares of a

New York corporation. Decedent died possessed of stock of the Consolidated Gas Company, a New York corporation, the certificates of which had been kept in Connecticut up to the time of decedent's death. On motion to vacate the order appointing New York Appraiser on the ground that full administration had been had and settled in Connecticut, the Court held: The shares of stock in the Gas Company were personal property in the State of New York, subject to the Transfer Tax Law of 1892 (*Re Bronson*, 150 N. Y. 1). A tax became due and payable to the State of New York at the time of the transfer of the shares and was a lien upon the property until paid. It became the duty of the executor of Mrs. Fitch's will to request the imposition of the tax under the laws of New York (*Matter of Embury*, 19 App. Div. (N. Y.) 218). The Surrogate Court has full jurisdiction to hear and determine all questions arising under the law, and it is unnecessary for ancillary administration to be initiated in New York to confer jurisdiction on the surrogate to act under the Transfer Tax Law. *Matter of Fitch*, 39 App. Div. (N. Y.) 609. Aff'd 160 N. Y. 87.

83. Stock—Issued by Corporation With Property in Two States—Shares Taxable at Full Value. National Bank Stock.

A resident of Maine died the owner of shares of stock in the Boston & Albany Railroad, a corporation organized under the laws of both Massachusetts and New York; and also the owner of stock in National Banks, organized under the laws of the United States, all the certificates of which were in the State of Massachusetts. The Court held: That the Boston & Albany stock was taxable at full value and not on a proportionate basis:

that the stock of National Banks doing business in Massachusetts was taxable. *Moody v. Shaw*, 173 Mass. 375.

**84. Stock of Corporation Organized in One State
—Property of Corporation in Several States.**

A resident of Illinois died in 1902, the owner of 4855 shares of stock of the N. Y. C. & H. R. R. Co., a corporation organized under the laws of the State of New York. This railroad company owned property in other states than New York. It was contended by executor that because the corporation had but thirty-six per cent (36%) of the corporate capital located in New York that the tax should be assessed in New York upon only 36% of the value of the stock. The Court held: "The assessment of the stockholder is computed upon the value of his interest in the whole of the corporate property as evidenced by the number of shares which he holds, and the interest of the deceased in the corporation, upon which the tax is computed is not determinable by the location of the corporate properties". *Matter of Palmer*, 183 N. Y. 238.

**85. Stock of a Corporation Organized in Two or
More States—Taxable on Proportion of
Property.**

Francis B. Cooley died a non-resident of the State of New York, possessed of certain shares of stock of the Boston & Albany Railroad Company, which shares passed by the will of decedent. In an appraisement proceeding under the laws of the State of New York the stock was valued at its full market value. The Boston & Albany Railroad Company is a consolidation formed by one or more New York corporations and one Massachu-

setts corporation. "It was, so to speak, incorporated in duplicate". The track mileage was about five-sixths in Massachusetts and one-sixth in New York. The principal offices, including the stock transfer office, were situated in Boston. The decedent died a resident of the State of Connecticut, owning 426 shares of the capital stock, the value of which, at the date of death, was \$252.50 per share. The court held:

"In the present case the decedent, by virtue of his stock as between him and the corporation, would be regarded as having an interest in all of its property and entitled to the earnings thereon when distributed as dividends and to his share of the surplus upon dissolution and liquidation proceedings independent of the fact that there were two separate incorporations.

But, as it seems to me, different considerations and principles apply to this proceeding now before us for review. Our jurisdiction to assess decedent's stock is based solely and exclusively upon the theory that it is held in the Boston & Albany Railroad Company. But we know that said corporation is also incorporated as a Massachusetts corporation and presumably by virtue of such latter incorporation it has the same powers of owning and managing corporate property, which it possesses as a New York corporation. In fact, the location of physical property and the exercise of various corporate functions give greater importance to the Massachusetts than to the New York corporation, and the problem is, whether for the purpose of levying a tax upon decedent's stock upon the theory that it is held in and under the New York corporation, we ought to say that such latter corporation owns and holds all of the property of the consolidated corporation wherever situated, thus entirely ignoring the existence of and the ownership of property by the Massachusetts corporation. It needs no particular illumination to demonstrate that if we take such a view it will clearly pave the way to a corresponding view by the authorities and courts of Massachusetts

that the corporation in that State owns all of the corporate property wherever situated, and we shall then further and directly be led to the unreasonable and illogical result that one set of property is at the same time solely and exclusively owned by two different corporations and that a person holding stock should be assessed upon the full value of his stock in each jurisdiction. Whether we regard such a tax as here being imposed, a recompense to the State for protection afforded during the life of the decedent, or as a condition imposed for creating and allowing certain rights of transfer or of succession to property upon death, we shall have each state exacting full compensation upon one succession and a clear case of double taxation. And if the corporation had been compelled for sufficient reasons to take out incorporation in six to twenty other states, each one of them might take the same view and insist upon the same exaction until the value of the property was in whole or large proportion exhausted in paying for the privilege of succession to it. While undoubtedly the legislative authority is potent enough to prescribe and enforce double taxation, it is plain that, measured by ordinary principles of justice, the result suggested would be inequitable and might be seriously burdensome.

No doubt is involved, as it seems to me, about the meaning and application of the statute. The decedent's stock was 'property within the State', which had its situs as being held in the New York corporation, and the transfer of it was taxable here. There can be no dispute about that. The question is simply over the extent and value of his interest as such stockholder, in view of the other incorporation in Massachusetts. I see nothing in the statute which prevents us from paying decent regard to the principles of interstate comity and from adopting a policy which will enable each state fairly to enforce its own laws without oppression to the subject. This result will be attained by regarding the New York corporation as owning the property situate in New York and the Massachusetts corporation as owning that situate in Massachusetts, and each as owning a

share of any property situate outside of either state or moving to and fro between the two states, and assessing decedent's stock upon that theory. That is the obvious basis for a valuation if we are to leave any room for the Massachusetts corporation and for a taxation by that State similar in principle to our own without double taxation. Some illustrations may be referred to, which by analogy sustain the general principles involved.

Where a tax is levied in this State upon the capital or franchises of a corporation organized as this railroad was, the tax is levied upon an equitable basis. Thus by the provisions of Section 6 of Chapter 19 of the Laws of 1869, under which the Boston & Albany Railroad was organized, the assessment and taxation of its capital stock in this State is to be in the proportion 'that the number of miles of its railroad situated in this state bears of the number of miles of its railroad situated in the other state', and under Section 182 of the General Tax Law of the State of New York the franchise tax of a corporation is based upon the amount of capital within the state.

Again, assume that for purposes of dissolution or otherwise receivers were to be appointed of the Boston & Albany Railroad, there can be no doubt that the receivers of it as a New York corporation would be appointed by the courts of that state, and the receivers of it as a Massachusetts corporation would be appointed by the courts of that state, and that the courts would hold that in the discharge of their duties the New York receivers should take possession of and administer upon the property of the New York corporation within the limits of that state, and would not permit the Massachusetts receivers to come within its confines and interfere with such ownership, and the Massachusetts courts would follow a similar policy. Why should not the State authorities for the purposes of this species of taxation and valuation, involved therein, adopt a similar theory of division of property?"

The Court reversed the Appellate Division (113 App.

Div. 388) which taxed on a full value and directed a re-appraisement of the stock on a proportionate basis. *Matter of Cooley*, 186 N. Y. 220.

**86. Mileage is a Basis to Determine Proportion—
But Is Not the Only Basis.**

In an appraisement to assess a transfer tax on the shares of stock of a non-resident of New York, the surrogate adopted the total track mileage of the Boston & Albany Railroad and the Fitchburg Railroad as the basis for his computation. It appeared however, that the Fitchburg Railroad Company owned in the State of Massachusetts certain grain elevators and connecting tracks which were described as being "outside of and apart from the ordinary freight and passenger terminals". This so-called special property was deducted by the surrogate before apportioning the stock on a mileage basis. The Court held: "The valuation of stock is a question of fact. The decision of the surrogate in this case, no error of law appearing, is conclusive upon the Court of Appeals". *Matter of Thayer*, 193 N. Y. 430, affirming *Matter of Thayer*, 126 App. Div. (N. Y.) 951.

**87. Stock of Corporation With Property in Two
or More States—Proportion Taxable.**

In an appraisement of the estate of a non-resident of Massachusetts wherein it was necessary to determine the taxability of stock of a corporation organized in more than one state, held: That the basis of value should be the proportion of the property of the company situated in Massachusetts. *Kingsbury v. Chapin*, 82 N. E. (Mass.) 700.

88. Stock—Non-Resident—Proportionate Value Taxable.

In an appraisement of the estate of a non-resident of the State of New Hampshire who died the owner of shares of stock of corporations organized in New Hampshire and other states, it was held that the stock should be taxed on a proportional basis, determined by the percentage which the property in New Hampshire bore to the entire corporate property. *Gardiner v. Carter*, 69 Atl. (N. H.) 939.

89. Stock—Non-Resident Ownership Requires Ancillary Administration in Taxing State.

When a decedent dies a non-resident of New Hampshire, the owner of shares of stock in a corporation organized both under its laws and of another State, ancillary administration is required if the shares are subject to tax. *Gardiner v. Carter*, 69 Atl. (N. H.) 939.

90. Stock of National Banks—Taxable.

A resident of the State of New York died prior to July 23rd, 1894. Her will was proved by the Surrogate Court of New York County and an executor qualified in that State. At the time of her death, the testatrix was possessed of real estate within Massachusetts, and also certain personalty, consisting, among other things, of shares of stock of the Suffolk National Bank of Boston, and two shares of the National Bank of Commerce of Boston. Also said decedent died possessed of shares of stock in the New Bedford Copper Company, the New Bedford Gas Company and the Fitchburg Railroad Company and the Boston and Maine Railroad Company, organized under the laws of Massachusetts; also she died possessed of shares of stock of the First National Bank

of Boston and of the Merchants' National Bank, the National Bank of Commerce and the Mechanics' National Bank, all located at Boston and organized under the laws of the United States of America. All of the certificates evidencing said shares were located in the State of New York at the time of her death. The Court held:

"There can be no doubt that stock in corporations organized under the laws of this Commonwealth, and of national banking corporations located in this State, is property within the jurisdiction of the Commonwealth, within the meaning of this statute (inheritance tax act). *Callahan v. Woodbridge*, 171 Mass. 595; *Re Bronson*, 150 N. Y. 1; *Tappan v. Merchants National Bank*, 19 Wall. 490, 500; *First National Bank of Mendota v. Smith*, 65 Ill. 44, 55; *Street Railroad v. Morrow*, 87 Tenn. 406, 427. Such a corporation being in a sense, a citizen of this State, and having an abiding place here akin to the domicil of a natural person, is subject to the jurisdiction of the Commonwealth, and is, in fact, within the Commonwealth. The stockholders are the proprietors of the corporation, which is itself the proprietor of the property owned and used for the ultimate benefit of the stockholders. While the corporation has a full and complete legal title to the corporate property, its ownership is, in a measure, fiduciary; for on winding up its affairs the surplus, after the payment of debts, must be divided among the stockholders. * * * By the terms of the statute the succession to property belonging to non-residents is subject to a tax like that of residents of the Commonwealth. That the certificates in the present case were in the State of New York at the time of the death of the testatrix is immaterial." *Greves v. Shaw*, 173 Mass. 205.

91. Stock of Foreign Corporations—Not Taxable.

Stock of a corporation organized without the State of Illinois, the certificates of which were owned by a non-resident at death, and which certificates had been held

for safe keeping for a continuous period of fourteen years in Illinois, and were administered and distributed in an ancillary proceeding in said State, are not taxable under the Inheritance Tax Law of 1895. *People v. Griffith*, 245 Ill. 532.

92. Stock of Foreign Corporation—Not Taxable.

Certificates of stock of foreign corporations physically within the State of New York at the time of the death of the owner who died a resident of England, are not taxable under the New York Act of 1885 as amended in 1887. *Re James*, 144 N. Y. 6.

93. Bonds of Foreign Corporation and Stock of National Bank Within the State.

William H. Dalrymple died testate, a resident of California, November 22nd, 1881. His will was admitted to probate in California and subsequently an exemplified copy of said will was admitted by the Registrar of Wills at Baltimore, Maryland. Thereafter Letters of Administration were issued by the Orphans Court at Baltimore. At the time of the death of decedent he was entitled to an undivided one-fourth part of the personal estate of his brother, Edwin A. Dalrymple, a resident of the State of Maryland, who died in the City of Baltimore in October, 1881, three weeks prior to the decease of said William H. Dalrymple. Upon the settlement of Edwin's estate the Maryland administrators of William's estate received from said Edwin's estate sundry certificates of "national bank stock and Baltimore city stock, several Missouri state bonds and cash aggregating the sum of \$27,000.00". Upon this sum the State of Maryland claimed an inheritance tax on the succession of Mrs. Gamble, a beneficiary under the will of William. The Court held:

"Possessing the plenary power indicated, it necessarily follows that the State (Maryland) in allowing property actually located here or personal property situated elsewhere but owned by a resident, to be disposed of by will and in designating who shall take such property where there is no will may prescribe such conditions not in conflict with or forbidden by the organic law, as the Legislature may deem expedient. These conditions subject to the limitation named are wholly within the discretion of the General Assembly. The Act we are now considering plainly intended to require a person taking the benefit of a civil right secured to him under our laws, should pay a certain premium for its enjoyment. *

* * * * * The whole contention of the appellee is, that the words used in the act of assembly, namely, 'being in this state' refer to the decedent and not to the property. If it be true they do refer to the person, the tax is not collectible because William H. Dalrymple was a citizen of California and domiciled there at his death. If, on the other hand they apply to the property the tax is collectible because the property is actually within this State and was so at the time of the death of William H. * * * * The tax, we have said, is on the transmission of the property 'being in the State' and no reason has been assigned or can be suggested why the broad language of the statute and evident design of the Legislature should be so narrowed and restricted as to exempt from this tax the property of a nonresident actually here, notwithstanding the same property, may, for other purposes, be treated as constructively elsewhere.

It results from what we have said the tax is payable in this case and the amount of the tax will depend on the sum in the hands of the appellees payable to the legatee". *State v. Dalrymple*, 70 Md. 294; 17 Atl. 82; 3 L. R. A. 372.

94. Bonds of Foreign and Domestic Corporations. Stock of Domestic Corporation.

Bonds issued by domestic corporations and bonds is-

sued by foreign corporations owned by a nonresident of the State of New York at the time of death, which said bonds were held in the State of New York at such time, are taxable under the Transfer Tax Law of 1892. *Matter of Whiting*, 150 N. Y. 27; *Matter of Morgan*, 150 N. Y. 35.

Stock of a domestic corporation owned by a nonresident at the time of death, the certificates of which were on deposit in the State of New York at such time, are taxable under the Transfer Tax Law of 1892. *Matter of Whiting*, 150 N. Y. 27.

95. United States Bonds—Stock of Foreign Corporations.

Not taxable. *Matter of Whiting*, 150 N. Y. 27.

96. Bonds—Foreign—When Taxable.

Bonds of foreign corporations situate within the State of New York at the time of the death of a nonresident owner are taxable under the Transfer Tax Act of 1892. *Matter of James*, 144 N. Y. 6.

97. United States Bonds—When Not Taxable.

The Surrogate Court following the decision in *Matter of Gibbes*, 84 App. Div. (N. Y.) 510, held in an appraisement of the estate of a nonresident of the State of New York, under the Laws of 1885 as amended in 1887 and 1891, that United States bonds held within the State at the time of the death of said nonresident owner, were not taxable. *Matter of Schermerhorn*, 50 Misc. Rep. (N. Y.) 233.

98. Bonds and Stock of Domestic Corporations Owned by Non-Resident and Situate Without the State.

Decedent died testate domiciled in the State of Connecticut in 1893, and by his will the residuary estate passed to his two sons, residents of that state. A part of the residuary estate consisted of shares of capital stock and bonds of corporations incorporated under the laws of the State of New York, all of which were in testator's possession at his domicile. The comptroller of New York claimed that both by the terms of Chap. 399, Laws 1892, and by force of the statutory construction law and upon the theory these bonds and shares represent interests in corporations incorporated under the laws of New York, they were, although not physically within the State, properly assessed by the surrogate for the purpose of taxation. The court held:

"The important words to be noticed in the law with reference to the matter at issue in the case of a nonresident are 'property within the State'. Their importance is evident; and in this connection reference may be had to Section 22 of the Transfer Act of 1892 which defines the word 'property' as used in the act, as meaning all property or interests therein 'over which this state has any jurisdiction for the purposes of taxation'. In the endeavor to ascertain the intention of the Legislature, with reference to what should be assessable for purposes of taxation as property under this act, we need go no further than the act itself, which, in imposing the tax, undertakes, in addition, to give a definition to property, the transfer of which, by will or by the intestate laws of the State creates the liability to taxation. It seems unimportant to consider that section of the Statutory Construction Law which gives a definition to the term 'personal property' (Ch. 677, L. 1892, Sec. 4); if indeed applicable. The Act contains within itself a complete system for the taxation of transfers of

property in cases of testacy and intestacy, and also controlling definitions for such words used in its sections as, in the judgment of the Legislature, might seem to require definition. Whatever may be argued in support of the right to subject the bonds of a domestic corporation to appraisement for taxation, when physically within the state, upon some theory that they are something more than evidences of a debt and constitute a peculiar species of property within the recognition of the law, as well as within the business community, such argument is unavailing in this case, where the bonds themselves were at their owner's foreign domicile. They did not represent 'property within the State' in any conceivable sense. What property they represented consisted in the debt of their maker and that species of property, unquestionably must be considered to be 'as a chose in action', the holder's and owner's and to be inseparable from his personality. * * * To call debts property of the debtors is simply to misuse terms. All of the property there can be in the nature of things, in debts of corporations belongs to the creditors, to whom they are payable and follow their domicile wherever that may be. Their debts have no locality separate from the parties to whom they are due. But with reference to shares of capital stock owned by decedent I think we are compelled to differ with the Appellate Division. The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds, towards the corporation which issued them. While the bondholders are simply creditors whose concern with the corporation is limited to the fulfillment of its particular obligation, the shareholders are persons interested in the operation of the corporate property and franchises and their shares actually represent undivided interests in the corporate enterprise. The corporation has the legal title to all the properties acquired and appurtenant; but it holds them for the pecuniary benefit of those persons who hold the capital stock; they appoint the persons to manage its affairs; they have the right to share in surplus earnings and after dissolution they have the right to have the assets re-

duced to money and to have them ratably distributed. Each share represents a distinct interest in the whole of the corporate property. As said in *Jermain v. L. S. & M. S. R. R. Co.* (91 N. Y. 492) it 'represents the interest which the shareholder has in the capital and net earnings of the corporation'; or, as Parke, B., put it, in *Bradley v. Holdsworth*, (3 M. & W. p. 424) it is 'a right to have a share of the net produce of all the property of the company'. Corporate shares must be regarded as property within the broad meaning of that term. Certificates of stock in the hands of their holder represent the number of shares which the corporation acknowledges he is entitled to. In legal contemplation the property of the shareholder is either where the corporation exists or at his domicile; accordingly as it is considered to consist in his contractual rights, or in his proprietary interest in the corporation. Hence, it cannot be said that the State is without jurisdiction over the shares of stock for taxation purposes, for, as we have said in *Re Enston*, 113 N. Y. 181, *re James*, 144 N. Y. 12, that a share of stock has its legal situs either where the corporation exists or at the holder's domicile. Although a chose in action must necessarily follow the shareholder's person, that does not exclude the idea that the property, as to which the right relates and which is, in effect, a distinct interest in the corporate property, is not within the jurisdiction of the State for the purpose of assessment upon its transfer through the operation of any law or of the act of its owner'"

Vann, J., dissented from this opinion on the ground that the bonds were subject to the jurisdiction as representing property in the State of New York and therefore taxable. *Matter of Bronson*, 150 N. Y. 1.

99. Bonds Held Out of New York Secured by Mortgage on Land in New York—Not Taxable.

Mary Preston died a resident of New Jersey in April,

1900, possessed of 29 bonds and mortgages, secured by real estate in the County of Kings, New York. The bonds and mortgages were actually in the State of New Jersey at the time of decedent's death. It was contended by the comptroller in a New York Inheritance Tax appraisement that said bonds and mortgages represented property in the State of New York for the purpose of taxation. The Court following *Matter of Bronson*, 150 N. Y., held the bonds and mortgages not taxable. *Matter of Preston*, 78 N. Y. S. 91.

100. Notes Secured by Mortgage.

Notes situated in a safe deposit box within the State of New York, owned by a nonresident of said State, when said notes were secured by mortgage on real estate situated without the State of New York, are personal property within the State of New York, as defined by the statutory Construction Law (Consolidated Laws 1909, Chapter 22, Section 39), and are taxable under the Transfer Tax Law of said State. The fact that said notes may be executed by a nonresident is immaterial. (*Matter of Whiting*, 150 N. Y. 27; 44 N. E. 715; 34 L. R. A. 232; 55 Am. St. Rep. 640.) *Re Tiffany's Estate*, 128 N. Y. S. 106.

101. Notes—When Situate at Domicile of Non-Resident of Massachusetts, but Secured by Real Estate Therein.

When the owner of a note or notes secured by mortgages upon real estate in Massachusetts, dies a nonresident of that state with the notes in his possession at his domicile, said notes have a situs for taxation in the State where the land is situate. The decision of the Court is, in part:

"In construing the scope of St. 1907, C. 563, Sec. 1, as amended by St. 1909, C. 268 and by St. 1909, C. 527, Sec. 1, which provides 'that all property within the jurisdiction of the commonwealth, corporal or incorporeal, and any interest therein, whether belonging to inhabitants of the commonwealth or not.' For general purposes the interest of the mortgagee is treated as personal property; it has a local situs and carries with it an ownership of the land until it is redeemed by the payment of the debt in performance of the condition. The debt, which is the obligation of the debtor to pay, and the land which is the security for payment of the debt, are individual parts of a single valuable property in the mortgagee, which may be made available in different ways. The debt belongs with the mortgage and it must co-exist to give the mortgage validity. For that purpose it has a situs within the jurisdiction of the State where the land lies. It was held in *McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. (Mass.) 881; 16 L. R. A. (N. S.) 329; that the tax upon the succession to real estate in this commonwealth, which belonged to a decedent in another state and was subject to a mortgage, was to be assessed only upon the value of the property above the mortgage. This was upon the ground that what passed upon the death of the mortgagor was only the value of his interest, which was the value of the real estate less the amount of the debt that was a charge upon it. This was equivalent to holding that upon the death of the mortgagee, his interest in the real estate to the amount of his debt would pass in succession to his representatives. The same doctrine has been held in states where the mortgage was only a lien upon real estate. It is the law of the Supreme Court of the United States. *Savings & Loan Society v. Multnomah County*, 169 U. S. 421; 18 Sup. Ct. 392; *Bristol v. Washington County*, 177 U. S. 133. It is also established by well-reasoned opinions in courts of several states. *Allen v. National State Bank*, 92 Md. 509; 48 Atl. 78; 52 L. R. A. 760; 84 Am. St. Rep. 517; *In re Merriam's Estate*, 147 Mich. 630; 111 N. Y. 196; 9 L. R. A. 1104; 118 Am. St. Rep. 561; *Re Rogers Est.*, 149 Mich. 305;

112 N. W. 931; 11 L. R. A. (N. S.) 1134; 119 Am. St. Rep. 677. The fact that the laws of the state and the jurisdiction of its courts must be invoked for preservation and enforcement of rights under the mortgage is an important consideration leading to this result. * * * There is strong ground for the respondent's contention that because the debts in all these cases could only be enforced in the ordinary way against the debtor by the use of our courts, we ought to hold they are property within the jurisdiction of the commonwealth and subject to taxation under this statute. See *Blackstone v. Miller*, 188 U. S. 189; *Matter of Daly*, 100 App. Div. (N. Y.) 373; 91 N. Y. S. 858; aff'd 182 N. Y. 524". *Kinney v. Stevens*, 93 N. E. 586.

102. Property Taxable in Two States—Money Deposited in New York—Depositor Resident of Illinois.

Decedent Blackstone died testate domiciled in Illinois possessed of a deposit of money exceeding \$4,000,000.00 in a Trust Company of New York. This deposit had been carried in said Trust Company for about fourteen months immediately preceding and up to the death of decedent and was subjected to a tax in an appraisement in the State of Illinois, and also in an appraisement in the State of New York. Among other questions presented to the Supreme Court of the United States was that of so-called double taxation. The Court held that the succession to such deposit was taxable in both states, and said in part:

"The property was delayed within the jurisdiction of New York an indefinite time, which had lasted for more than a year, so that this finding at least was justified. *Kelly v. Rhoads*, 188 U. S. 1, *ante*, 359, 23 Sup. Ct. Rep. 259. Both parties agreed with the plain words of the law that the tax is a tax upon the transfer, not upon the deposit, and we need spend

no time upon that. Therefore the naked question is, whether the state has a right to tax the transfer of such deposit by will. * * * * The answer is somewhat obscured by the superficial fact that New York, like most other states, recognizes the law of the domicile as the law determining the right of universal succession. The domicile, naturally must control a succession of that kind. Universal succession is the artificial continuance of the person of a deceased by an executor, heir, or the like, so far as succession to rights and obligations is concerned. It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying *mobilia sequuntur personam*. But being a fiction it is not allowed to obscure the facts when the facts become important."

Blackstone v. Miller, 188 U. S. 189.

103. Money—Deposited in New York State for Nearly Two Months—Taxable.

The succession to money of a nonresident deposited in the State of New York for nearly two months before the death of depositor is taxable; the objection to such tax on the ground that it was temporarily in the State for investment is not tenable. (*Blackstone v. Miller*, 188 U. S. 189.) *Re Myer's Estate*, 129 N. Y. S. 194.

104. Money of Non-Resident Decedent on Deposit in New York—Trust Account.

Houdayer died intestate a resident of New Jersey in May, 1895. In 1876 he opened an account with a trust company in the City of New York as trustee under the will of Edward Husson, deceased, in which he also made deposits from time to time of moneys belonging to himself. This continued as an open account until his death when the balance on hand was \$73,000.00, of which \$2,000.00 belonged to him as trustee, and the remainder to himself individually. The Appraiser taxed the individ-

ual moneys. The Court held: "While distribution of the fund belongs to the State where the decedent was domiciled, as such distribution cannot be made until his administrator comes into this State to get the fund, possibly after resorting to the Courts for aid in reducing it to possession, the fund has a situs here because it is subject to our law". Appraiser's finding sustained. *Matter of Houdayer*, 150 N. Y. 37.

105. Notes Secured by Mortgage Taxable in Michigan.

Notes secured by a mortgage upon Michigan real estate, when said notes were in the actual possession of the nonresident owner at the time of death, are subject to the succession tax under Act No. 195, Pub. Acts 1903 (Mich.) on the ground that the collection can be enforced only by invoking the laws of Michigan, and further that the administration laws of Michigan must be called to aid the collection. The Court says:

"The estate of Mr. Rogers cannot be properly administered and closed without ancillary letters of administration obtained under the laws of this state. In this connection, the language used by Justice Holmes in *Blackstone v. Miller, supra*, is pertinent. We quote:

'If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. *United States v. Perkins*, 163 U. S. 625, 628, 629; *McCulloch v. Maryland*, 4 Wheat. (U. S.) 316, 429. But it is plain that the transfer does not depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this Court with regard to garnish-

ments of a domestic debtor of an absent defendant. *Chicago, etc., R. Co. v. Sturm*, 174 U. S. 710. See *Wyman v. Halstead*, 109 U. S. 654. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander *actio personalis moritur cum persona*, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

Power over the person of the debtor confers jurisdiction, we repeat; and, this being so, we perceive no better reason for denying the rights of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim '*mobilia sequuntur personam*' has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way.' " *Re Rogers*, 149 Mich. 305.

106. Notes Secured by Mortgage on Lands in Michigan Subject to Taxation.

A note secured by mortgage on lands in the State of Michigan, when the note was located without that state in the possession of nonresident owner at death, is subject to a succession tax under the Michigan laws. *In re Merriam Estate*, 147 Mich. 630. *Re Stanton's Estate*, 142 Mich. 491.

107. Land Contracts.

When a nonresident of the State of Michigan dies the owner of contracts for the sale of lands in the State of Michigan and said contracts are not within the State of Michigan at the time of the death, said contracts are taxable under the Michigan laws at their market value. *Re Rogers Estate*, 149 Mich. 305; *Re Stanton*, 142 Mich. 491.

108. Non-Resident—Capital Invested in Business in New York—Stock Exchange Membership Taxable.

"The single question to be determined upon this appeal is whether a seat or membership in the New York Stock Exchange of a nonresident of this State is taxable under the law in relation to taxable transfers. This depends entirely upon whether such a seat in the New York Stock Exchange is to be considered as personal property. * * * (Although) a seat in the New York Stock Exchange is not personal property under the restricted definition of the Tax Law (Laws of 1896, Chap. 908, Par. 2, Subd. 5, as amended by Laws of 1901, Chap. 490), yet it is undoubtedly capital invested in business in this State which has a market value and can be bought and sold. If it is capital invested in business in this state, it is property, as it is difficult to see how capital invested in business, which has a market value and can be bought and sold, does not fall within the term property'. The restrictions under which this property is held in no way affect its character. They may detract or add to its value. As was said by Mr. Justice Vann in the opinion in the case cited: 'The money used by him to buy his seat was neither thrown away nor given away, but was paid for property of great value, which was the main instrumentality for carrying on the business in which he was engaged. It is difficult for me to see what was done with the money unless it was invested'. These expressions of the learned judge clearly show that

what was bought was property; and it appears that it can be sold and is of great value.

We think, under these circumstances, that the decree of the surrogate was right and should be affirmed, with costs". *Matter of Glendinning*, 68 App. Div. (N. Y.) 125.

109. Partnership Property.

When not taxable. See succession of Stauffer, 119 La. 66.

110. Partnership—Assets in New York and Illinois.

So much of the assets of a partnership kept in New York of a firm which does business both in New York and Illinois, are taxable under the laws of New York. *Matter of King*, 30 Misc. Rep. (N. Y.) 575.

111. Non-Resident Decedent Possessed of Legacy in New York Estate.

Elizabeth Fogg died a resident of New York in January, 1891, and devised her residuary estate equally to two persons, one of whom was John M. Phipps of Boston, Massachusetts. Phipps died in January, 1892, at his home in Boston, leaving a will which was admitted to probate in that state. A copy of the will was admitted to probate in the County of New York and ancillary letters issued. In an appraisement of the Fogg estate a tax was fixed on the legacy to Phipps, which was paid by the executors of her estate. The legacy to Phipps was never paid to him, he having died before Mrs. Fogg's estate was settled. By the will of Phipps his estate passed to his widow. Held, that Phipps's interest in the Fogg estate passing to his widow was a mere chose in action—a right to claim a share of a

residuary estate, but consisting of no particular property, nor any particular sum, and therefore not taxable in the State of New York. *Re Phipps*, 77 Hun 325.

112. Share of Resident Decedent in Undistributed Foreign Assets.

Decedent Thomas died a resident of the State of New York. Among the assets of her estate was a distributive share in the estate of a deceased sister who died a resident of the City of Cleveland, State of Ohio, no part of which distributive share had come into possession of decedent prior to death, aside from some certificates of stock. Held, such distributive share not taxable. *Matter of Thomas*, 3 Misc. Rep. (N. Y.) 388.

113. Deceased Non-Resident's Interest in Resident Decedent's Estate.

Robert T. Clinch died a resident of Paris, France, entitled to a distributive share in the residuary estate of his father, Charles J. Clinch, who died a resident of New York. No question was raised as to the tax on the succession of Robert to the share in his father's estate, but question was raised that Robert's undistributed share passing by his will was taxable under the laws of New York. The Court held, that under the doctrine announced in the Blackstone case (*Blackstone v. Miller, supra*), that the legatees of Robert were taxable. *Matter of Phipps*, 77 Hun 325, aff'd 143 N. Y. 641, as well as *Matter of Zefita*, 167 N. Y. 280, were cited, but the Court based its ruling on the four cases in the 150th New York. viz: Bronson, Whiting, Morgan and Houdayer. *Matter of Clinch*, 180 N. Y. 300.

114. Non-Resident Decedent a Beneficiary in Unliquidated Assets Within the State.

Edward C. Lord died testate, a resident of New Jersey, in January, 1892. By his will he bequeathed his individual property to his wife, who was also a resident of New Jersey. One of the questions arising in this case was, whether the succession of legatees under the will of Emily M. Lord, a resident of New Jersey, and widow of the decedent, who died before the distribution of the estate of Edward C. Lord, was taxable. Edward C. Lord had maintained a safe deposit box in New York containing securities of the approximate value of \$144,000.00, which had passed to Emily M. Lord, by the death of decedent. The Court held, citing the cases of *Re Phipps*, 77 Hun 325 and *Matter of Zefita*, 167 N. Y. 280, that the beneficiaries under Emily M. Lord's will to her undistributed share in her husband's estate, were not taxable. *Matter of Lord*, 111 App. Div. (N. Y.) 152.

115. Credits of Non-Resident in Taxing State—When Taxable.

D. died testate a resident of Montana on November 12th, 1900. At the time of the death testator was the owner of considerable personal property situate in the State of New York, consisting of a lease on real estate and deposits in banks. In an appraisement proceeding appealed to the Appellate Division the question arose as to the taxation of two items, as follows: In September, 1899, testator loaned one R. (\$2,000,000.00; November 1st, 1900, there was due on this debt \$1,300,000.00. R. desired at that time to discharge the whole debt and had rendered a statement to D. showing the balance remaining due and unpaid. On that date D. was incapacitated and so remained until his death. On said

November 1st, R. drew his check for the total balance due D., said check bearing date on that day and delivered the same to his Secretary with instructions to use it to discharge the debt. Seven days thereafter the check was delivered to D's Secretary who took the same to the National City Bank of New York and deposited it to D's account. The bank refused to receive the check for deposit in the general account of D. but did receive same and opened a special account with D. for the amount of the check. The Secretary endorsed the check "Speci a/c". This transaction was effected November 7th, 1900, and remained unchanged for the next five days when D. died.

The other item involved the sum of \$263,000.00 which was money on deposit with a firm of bankers in New York. This deposit was made to margin stock transactions, and the stock purchased from said fund had been closed out and this sum was held for D. pursuant to direction. The Court, holding both deposits to be debts due D., said: "We think its rule (referring to the Blackstone case, *supra*), must obtain and so obtaining it necessarily follows that debts due within this State from solvent debtors, which are converted into money therein, and must of necessity be enforced in this jurisdiction, or not at all, become property within the meaning of the Transfer Tax Law and as such are taxable." *Matter of Daly*, 100 App. Div. (N. Y.) 373.

**116. TAX PAID TO UNITED STATES UNDER FEDERAL
INHERITANCE TAX LAW AND TAX PAID TO THE
STATE OF MONTANA DOES NOT AFFECT TAXATION
IN THE STATE OF NEW YORK.**

Matter of Daly, 100 App. Div. (N. Y.) 373.

117. Non-Resident—When Property in Taxing State is Equaled by Indebtedness.

Decedent died a non-resident of the State of New York leaving property in that State which was subject to an indebtedness to creditors resident of the same State in excess of testator's property therein. The Court held:

"The tax being on the transfer of the property of the decedent within the State and being imposed when a person or corporation becomes beneficially entitled to the property, it is only the property to which a beneficiary becomes entitled upon which a tax is imposed and it would seem to follow that when the debts of the decedent, due to creditors residing within this State equal or exceed the decedent's property within this State, that there is no transfer of property upon which a tax is imposed. In other words, what was taxable was the property of the testator within this State which was in excess of the amount of the debts of the testator to creditors who were residents of this State with the payment of which this property was primarily chargeable." *Matter of Grosvenor*, 124 App. Div. (N. Y.) 331.

118. Insurance—Domestic Policy on Life of Non-Resident Not Taxable.

Decedent died a resident of New Jersey owning a policy of insurance issued by a life insurance company organized under the State of New York. It was contended by the comptroller for the State of New York, citing *Blackstone v. Miller*, 188 U. S. 189, *Re Houdayer*, 150 N. Y. 37; *Re Clinch*, 180 N. Y. 300, that such insurance was taxable in the State of New York. The Court held, the insurance not taxable. *Re Gordon*, 186 N. Y. 471.

119. Insurance—Domestic Policies on Life of Non-Resident Not Taxable.

Policies of insurance issued by a life insurance company organized under the laws of the State of New York upon life of a non-resident of said State are not taxable in the State of New York. The contention of the comptroller that they are taxable, on the ground that said corporations are creatures of the State laws and that the State has limited the right to take property out of the state, and that the State has made itself a beneficiary and creditor of decedent, which fixes a lien on such insurance at the moment of the death of said insured, and that the policies are not essential to the insurance, nor the jurisdiction of the surrogate, is not tenable. *Matter of Abbott*, 29 Misc. Rep. (N. Y.) 567.

120. Contract for Sale of Land in Nebraska—Owner a Resident of New York.

A contract for sale of Nebraska real estate, said contract being executed by a resident of the State of New York retained in his possession until death, is not subject to the Inheritance Tax Laws of the State of Nebraska. *Dodge County v. Burns*, 131 N. W. (Neb.) 922.

121. Non-Resident Estate—Distribution by Executors Cannot Avoid Taxation.

Executors of a non-resident estate cannot make such a distribution in the way of payment of debts and legacies so as to avoid or lessen a tax. *Kingsbury v. Chapin*, 82 N. E. (Mass.) 700.

122. Non-Resident Estate—Distribution by Administrator Cannot Avoid Taxation. Proportion of Indebtedness Deductible.

R. died intestate a resident of Massachusetts. His

personal estate, amounting to about \$72,000.00 was all outside the State of New York, except a few shares of stock in two New York corporations of the value of about \$6,400.00. An Appraiser developed the evidence that the total indebtedness of the entire estate equalled \$12,000, and accordingly allowed 9% deduction from the property taxable in New York. This resulted in a tax on certain nieces and nephews at the rate of 5%. On a motion to vacate the order of the surrogate the administrator contended that he had elected to apply all of the property in New York to the payment of debts, which election, if effected, would avoid the tax in New York. Held, that the nieces and nephews became vested of their interests as of the time of the death, and that the election of the administrator would not be recognized. Surrogate's order affirmed. *Matter of Ramsdill*, 190 N. Y. 492.

123. Distribution of Property of Non-Resident Cannot Reduce Tax—Pro Rata Distribution.

A foreign executor cannot make an arbitrary distribution of property in the way of payment of debts and satisfaction of legacies so as to reduce the Inheritance Tax. Property in the State of Iowa belonging to a non-resident may be distributed pro rata in payment of legacies and bequests. *Wieting v. Morrow*, 132 N. W. (Ia.) 193.

124. Non-Residents—Property in Taxing State Pro Rated for Taxation. Executors Can Not Distribute So as to Reduce Tax.

Chapter 310, Laws 1908 (N. Y.) provide that the property of a non-resident decedent not specifically bequeathed shall be transferred proportionally for taxa-

tion and divided pro rata among the general legatees named in decedent's will, including transfers under residuary clause. A decedent died a resident of Connecticut possessed of securities situate in the State of New York. Executor filed affidavits showing that he had elected to apply the securities in the payment of legacies created in Article II of the will, but the Appraiser divided the property in New York pro rata among all the legatees in the will. Held, that the property should be pro rated for taxation and the election of the executor was refused as a basis of distribution. *Re Porter's estate*, 124 N. Y. S. 676.

125. Paragraph 3, Section 1. When the transfer is of property made by a resident, or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

126. Transfer in Contemplation of Death.

Decedent died testate, a resident of Cook County, on September 1st, 1902. Thirty-three days before his death he gave to his widow property of the value of \$150,000.00. Decedent at the time of death was fifty-one years of age, well educated and widely read. He had been troubled for several years with what was supposed to be a rheumatic difficulty, causing a pain in his shoulder,

for which he was occasionally treated, but his appearance was that of a vigorous, active man. On July 7th, 1902, symptoms developed, indicating spinal disease. His family was then absent from Chicago, and "it was decided he should take a trip on the lake. He did so, but returned on July 17th, much worse, with aggravated symptoms * * *." On July 20th, a consultation of physicians was had. Examination at that time showed a pressure on the spinal column, probably due to some malignant growth. When he came back from the boat trip his physicians advised him to write for his wife, knowing he would be confined to his bed and "would want his family near him". She returned on July 20th, the day of the consultation, and at that time his physicians knew he would die sooner or later from the disease. He did not go to business after his return and after July 20th was confined to his bed. On July 25th, he was able to stand on his feet and use his limbs with the greatest difficulty, and the physicians had become convinced that the disease would be fatal.

On July 28th, while his attorney was present, the gift in question was made, and his will was prepared and executed on July 31st. His physician did not tell him he was going to die. He did not ask the physicians what was the matter with him, and the physicians did not tell him. He talked about going abroad to recuperate and said nothing about his death. The disease, which was a malignant growth, progressed rapidly until his death on September 1st, 1902. The Court held:

"The question is, whether the gift of \$150,000.00 was made by decedent in contemplation of his death within the meaning of the law. The argument for appellant is largely devoted to the question whether the gift was made *inter vivos* or a gift *causa mortis*, and counsel contend that it was an absolute gift

inter vivos, and that there was no evidence of an intent to defraud the state of an inheritance tax and for these reasons, it was not subject to the tax. They rely upon decisions in New York, where the courts, in construing a similar statute, appear to have considered it important to determine whether the gift be *inter vivos* or *causa mortis*, and have held that if it was *causa mortis*, the property would be subject to the tax; but if it was *inter vivos* the property transferred would not be taxable unless made by the donor and received by the donee for the purpose and with the intention of evading the Inheritance Tax and defrauding the State. There is no presumption that a person intends to commit fraud and under these decisions it must be proved that a gift *inter vivos* was made in contemplation of impending death and was made and received for the purpose of defrauding the State. We do not regard it as necessary to classify gifts in that way in order to interpret or give effect to the language of our statute * * *. Gifts *causa mortis* would be within the statute, that is, a gift by one who anticipates death as being near, made in view of his death and to take effect by that event. * * * The statute, however, embraces all gifts made in contemplation of death and the language does not naturally or necessarily involve a fraudulent intent. A gift is made in contemplation of an event when it is made in expectation of that event and having it in view, and a gift made when the donor is looking forward to his death as impending, and in view of that event, is within the language of the statute. With that understanding of the law there is no doubt that the gift in this case was made in contemplation of death. The preparation of the will under the circumstances and in view of the rapid progress of the disease is strong evidence that death was expected and no other moving cause than the expectation of death is apparent". *Rosenthal v. The People*, 211 Ill. 306.

127. Transfer in Contemplation of Death.

Decedent died a resident of Ottawa, Illinois, on April 25th, 1903. At the time of his death he was about sixty-five years of age, and had up to a few months prior to said decease, been actively engaged in business and had accumulated a fortune. For a period of eight or ten years prior to his death he had been afflicted. In the month of April, 1903, under the advice of his physician, he determined to submit to a surgical operation. On the 13th of that month he went to a hospital in Chicago, and on the same day an operation was performed, from the effect of which he died two days thereafter. Before his departure for Chicago on April 10th, by conveyance and assignment absolute in form, he conveyed and assigned all his property, both real and personal, with the exception of two life insurance policies, to his wife. The Court held:

“It is urged that the stipulation found in the record to the effect that the transfers to Mrs. Merrifield, etc., were absolute, and that they were accepted by them, that they entered into possession and ownership of the property transferred to them, respectively, and that after said transfers were executed decedent had no interest in said property and that said transfers were gifts *inter vivos* and not gifts *causa mortis*, and that the title to property vested in said donees during the life of decedent, and that the donees are not liable to pay an inheritance tax for that reason. In the eye of the law, the transfers may have been absolute and yet have been made by decedent in contemplation of death. In other words, a gift *inter vivos*, if made in contemplation of the death of the donor, will subject the donee to a tax, while if made not in contemplation of death, it would not.”

Held, the transfer to be made in contemplation of death. *Merrifield v. The People*, 212 Ill. 400.

128. Transfer in Contemplation of Death. Act Imposing Tax Constitutional.

A resident of Chicago died July 26th, 1902, having reached the age of 75 years. In March, 1902, decedent gave to his brother 950 shares of stock. On the 20th day of June, 1902, certificates of stock, evidencing 1000 shares in the Pine Land Company and of the value of about \$100,000.00 were transferred upon the books of said corporation to Dr. Ward (his son-in-law and physician), as trustee for the use and benefit of Harriet Stevens Ward, granddaughter of decedent. Decedent's health had been declining for some months before his death. He was suffering from Bright's disease of the kidneys and hardening of the arteries. The evidence shows decedent was able to be out of the house and to attend to a portion of his business during the spring and early summer before his death. On June 14th, Doctor Ward held a consultation with another physician who testified that decedent had Bright's disease and hardening of the arteries, from which he was much enfeebled. On June 23rd, the physicians discovered that there was also a degeneration of the kidneys and decedent had an enlarged heart. The physician testified he saw the patient again on the 25th of June and again on July 3rd, 8th, 15th and 21st. On July 14th, it was discovered decedent was suffering from deterioration of the blood vessels and there was an enlargement of the aorta. On July 26th decedent died from a rupture of the enlarged aorta produced by vomiting. It was contended by attorney for the executor that Section 1 of the Inheritance Tax Law of 1895 was unconstitutional on the ground that it impairs the obligation of a contract when it is directed to apply to gifts *inter vivos*. The Court held the Act constitutional and further, that the facts disclosed

a condition from which it must be concluded decedent contemplated death at the time of the transfer to Harriet S. Ward, beneficiary of the trust. The question of taxation of the gift to the brother did not arise as a tax was collected on the ground that said transfer to the brother was made to take effect at or after death and said question did not go to the Supreme Court. *Estate of Benton*, 234 Ill. 366.

129. Transfer—When Not in Contemplation of Death.

K. and wife did, on March 1st, 1900, execute to the Illinois Trust & Savings Bank of Chicago, a trust deed transferring real estate of the approximate value of \$260,000.00. The deed was delivered on March 13th, 1900. K. executed his will on June 20th, 1900, and at that time was about sixty-nine years of age and had been, prior to his death, engaged in business in Chicago. He had been troubled with valvular disease of the heart for many years and was confined to his house from an attack of heart disease at the time he executed said trust deed. His family physician testified decedent was subject to such attacks for many years; that they were brought on by over exertion; that he had theretofore recovered from same and there was no apprehension of Mr. K's immediate death at the time the deed was executed. K. recovered his usual health shortly after the deed was executed and remained in said condition until the following September (six months) when he was again taken sick and died on October 25th, 1900. The Court said on the question of contemplation of death that the record did not disclose any evidence or tend to show that decedent thought that he was about to die at

the time he executed said trust deed, or that he made said trust deed in contemplation of his death.

"It is not the object of the statute to prevent a parent from giving the whole or any portion of his property to his children during his lifetime, if he so desires; the only effect of the statute as a revenue measure is to subject said property to an Inheritance Tax if the gift is made in contemplation of death of the donor. In *Rosenthal v. The People*, 211 Ill. 306 and *Merrifield v. The People*, 211 *id.* 400, the evidence showed clearly that both Rosenthal and Merrifield were about to die at the time they made the transfers there considered, and that transfers of the bulk of their estates were made to their immediate descendants as a disposition of their respective estates in contemplation of death, which they each knew was almost immediately likely to follow and which did follow the making of the transfers, within a few days". *People v. Kelly*, 218 Ill. 509.

130. Transfer to Take Effect After Death—A Writing Not Necessary to Evidence Retention of Income.

Robert Moir died December 19th, 1901. His residence was adjudicated to have been in Illinois. On June 1st, 1898, decedent executed a deed for the consideration of One Hundred Dollars and good and other valuable consideration to his three sons, purporting to convey to them all of his real estate situate in Warren and Henderson Counties, Illinois, excepting a homestead, which deed was acknowledged February 26th, 1899, recorded in Henderson County, March 25th, and in Warren County, March 27th, 1902. On the same day the deed bears date the decedent gave to each of his sons \$200,000.00 in personal property, and at the same time articles of co-partnership were executed between the decedent and his said sons, whereby the members of the firm were

each to put into the business \$200,000.00, and said firm was to succeed to the banking business carried on by said decedent, Robert Moir. Decedent was to receive one-half of the profits of the business and the other one-half was to be divided equally among his three sons. The farms owned in Warren and Henderson Counties purported to have been conveyed by deed had been rented by decedent prior to the execution to a number of tenants and they knew of no change in the ownership of the farms prior to the death of Moir and they transacted business connected with the renting of said farms and payment of rent with said Robert Moir after the date of the deed and in the same way as they had done before that date. The sons testified the land was not partnership estate, but that the income thereof, as it accrued, was carried into the partnership account, and that decedent received one-half thereof as a member of said firm up to the time of his death. The Court held that it was not necessary for the deeds themselves to disclose to whom the income, from such land or lands, was payable, and that the one-half of the real estate on which the income and rents ultimately reached the donor was subject to the Inheritance Tax Act in force July 1st, 1895. The Court did not pass upon the taxability of the personal property transferred to the partnership.

People v. Moir, 207 Ill. 180.

131. Transfer to Take Effect After Death—When Taxable.

One David Kelley died testate a resident of the State of Illinois, on October 25th, A. D. 1900. On March 1st, 1900, said decedent and his wife executed to a trust company in Chicago a trust deed conveying improved real estate in Chicago, of the value of \$260,000.00, which

yielded an annual income of \$14,500. By the terms of the deed the net annual income was to be paid quarterly in equal sums to the two sons of the grantors and their heirs, with the exception of \$200 per month, which was to be held by the trustee until the end of each year, when same was to be paid to the grantors or survivors of them during their natural lives, if they requested in writing said payment. The \$200.00 per month provision was not paid until after the death of decedent, but since that time was paid to the widow. On stipulation of the parties, the County Judge fixed \$43,000.00 as the proportional value of the \$260,000.00 as the amount necessary to produce \$200.00 per month and fixed a tax upon said \$43,000.00 as a transfer to take effect at or after death under Section 1 of the Inheritance Tax Laws of Illinois, in force July 1st, A. D. 1895.

It was held that although there was an absolute transfer of all property to the trust company in trust, yet the retention of the right in the decedent and his wife to receive \$200.00 per month from the property transferred in trust was a transfer to take effect at or after death, within the meaning of the statute. *People v. Kelley*, 218 Ill. 509.

132. Transfer Prior to Death—When Not Taxable.

One Garwood died testate February 17th, 1907, a resident of Illinois, the owner of real and personal property of the value of about \$125,000.00. A few years before his death he transferred title to his property to Anna E. Burkhalter, who was not related to him either by blood or marriage. An Appraiser appointed under the Inheritance Tax Law assessed a tax against her on the transfer as

being made to take effect at or after death. Garwood's wife died in 1897, leaving surviving of the marriage a daughter, then about 35 years old, who was unable to speak or hear. Burkhalter had lived with the Garwood family a number of years prior to decedent's death as a companion of Miss Garwood, who, by reason of her affliction, needed a constant attendant. After Mrs. Garwood's death Miss Burkhalter remained with Miss Garwood until 1901, when she quit that service and was married, declining Mr. Garwood's offer of \$40,000.00 if she would continue there and not get married. Thereafter through the mediation of Miss Burkhalter's brother, she was induced to undertake the care of decedent's daughter and remained in his household under an agreement whereby, in consideration of appellee continuing to act as companion of and caring for decedent's daughter as long as the latter lived, Mr. Garwood undertook to convey and transfer to appellee all the property he possessed. Appellee faithfully performed her part of the contract until Miss Garwood's death in 1904. On the other hand, decedent performed his part of the contract by assigning to appellee from time to time different portions of his property until he had transferred it all to her, the last transaction being a few weeks before his daughter's death. Miss Burkhalter at once took possession of the property so transferred to her and leased and controlled the real estate, and had the actual custody of the stocks, bonds, notes and deeds. The Court held:

“It was not decedent's impending death which was the impelling motive for making this disposition of his property, but his desire to provide for his daughter's future. The contemplation of death must be the impelling motive, without which the conveyance would not have been made in order to subject a transfer of property to the inheritance tax.”

Decedent did not transfer the property to his daughter or in trust for her; "instead he sold it in consideration of a contract for her care, the performance of which began and was completed in his lifetime." Held, that the transfer was not taxable. *People v. Burkhalter*, 247 Ill. 600.

133. Transfers Prior to Death—When Taxable.

Nancy Boone transferred to her sons a certain tract of land "for and in consideration of the love and affection that I have for my sons, and the further consideration of the assistance they have rendered me since the death of my husband." There was no proof of the character of assistance rendered by the sons. In a proceeding to assess a tax under the Federal Inheritance Tax Law, it was held: The succession tax cannot be defeated by reciting a nominal consideration, which would be deemed valuable in the technical sense of that term, for the Act of Congress (under which this proceeding was had), says the consideration must not only be valuable but adequate. Held taxable. *United States v. Hart*, 4 Fed. Rep. 292.

134. Transfers—To Take Effect At or After Death.

John W. Masury died May 14th, 1895. On September 14th, 1892, he executed and delivered two deeds of trust to the Brooklyn Trust Company in favor of John M. Masury; one for \$81,000.00 and the other for \$119,000.00. In December, 1892, John W. executed and delivered a deed of trust in favor of Frederick M. Masury, transferring a fund of \$62,000.00 to Brooklyn Trust Company. The income from the trusts were to be paid directly to John M. Masury and Frederick M. Masury.

On March 10th, 1890, John W. executed and delivered a deed of trust to the Brooklyn Trust Company in an amount of \$10,200.00, providing in said deed that the income should be paid to said John W., grantor, or order, during his life and afterward to those he might designate in his will, or to his children. The provision was modified July 19, 1892, by a writing, directing the trustee to pay to John M. Masury "all net income arising from the trust fund transferred to said Company under said deeds of trust until this authority is revoked by me in writing." Each deed contained a reservation in grantor "to revoke and annul the same during my lifetime." Held, that as to the trust deeds of 1892, the title to and income from the property passed from grantor; that the reservation in grantor to revoke did not change the title, and would not until exercised, which it never was; that said transfers were not made to "take effect at or after death." As to the deed of March 10th, 1890, the reservation of the income brings the case within the rule laid down in *Matter of Seaman*, 147 N. Y. 69.

John M. Masury's rights did not accrue until the death of John W. The order of John W. to trustee, dated July 19th, 1892, to pay the income to John M., did not change the legal effect of the instrument. The income was paid by virtue of this order to John M., not because of any rights under the trust deed but upon the order of John W., the same as the income might have been directed to John Smith by the order of John W. Surrogate's decree reversed in part and affirmed in part. *Matter of Masury*, 28 App. Div. (N. Y.) 580. Aff'd without opinion, 159 N. Y. 532.

135. Transfer—To Take Effect At or After Death.

Bostwick executed and delivered six deeds of trust, naming the New York Life Insurance and Trust Company, trustee, and providing for the payment of part of the income from the property in three of the deeds to his sisters and reserving to himself all the income, or right to appoint same, in the fourth deed. The other two deeds provided an income to his daughters. Grantor reserved part of income to himself in the three deeds, all of the income in the fourth deed; and none of the income, nor did he receive any, from the two deeds to his daughters; but Bostwick reserved in all deeds the right to alter, amend or withdraw any portion of property and terminate the trusts at any time during his life. The Court said:

“It requires neither argument nor authority to demonstrate that a tax was properly imposed. By the instruments Bostwick did not in fact dispose of the property at all. After delivering the instruments to trustee, he could not only acquire possession of the property, but he could dispose of it just as effectually as ever. The trustee was little more than bailee or attorney. (*Matter of Masury*, 28 App. Div. (N. Y.) 580, distinguished.) The reservation of power to amend, alter or terminate the trust indicated the intention that the transfers were not to take effect in possession or enjoyment until death.” *Matter of Bostwick*, 38 App. Div. (N. Y.) 223; Aff’d 160 N. Y. 489.

136. Transfer to Take Effect at Death.

A testator died November 15th, 1897. On January 2nd, 1893, he transferred to his four daughters eleven shares of stock. On the same day the daughters executed to said Brandreth an instrument, which recited that the transfer was “upon condition that he (Brand-

reth) is to receive all dividends for the term of his life and also upon condition that he has the right to vote the stock the same as though no transfer had been made; that this agreement is not revocable by any of the parties. The Court said:

"Though the remainder may vest in title at its creation, it cannot vest in possession until the determination of the prior estate. It makes no difference in this respect whether the remainder is vested indefeasibly or is contingent or subject to be divested. In the present case the prior estate is one for the life of the donor, and, therefore, the remainder transferred to his daughters falls exactly within the provision of the statute as a transfer to take effect in possession or enjoyment on the death of the donor." Reversing 58 App. Div. (N. Y.) 575; *Matter of Brandreth*, 169 N. Y. 437.

137. Transfer—Intended to Take Effect at Death of Donor.

Testatrix died a resident of New York, May 21st, 1893. On February 14th, 1889, she transferred in trust, by deed, property exceeding \$200,000.00. By the terms of the deed in trust it was provided that the donor should have the use of the income during her life and after her death the property to pass to her nieces. The court held, that conceding the remainder in the nieces vested on the delivery of the deed, yet the real question was, whether the remainder, which the nieces took under the deed, was intended to "take effect in possession or enjoyment at or after the death of the donor." It was determined that the nieces were taxable as the beneficiaries of property transferred to take effect in possession or enjoyment at or after the death of the donor. (Laws 1892 (N. Y.), Ch. 399, Sec. 1.) *Matter of Greene*, 153 N. Y. 223.

138. Transfer Prior to Death—Reservation of Income by Oral Arrangement.

A transfer of property absolute on its face when accompanied by an oral arrangement between the donor and donee that the donor shall have the income from the property for life, is taxable. *Matter of Cornell*, 170 N. Y. 423, modifying *Matter of Cornell*, 66 App. Div. (N. Y.) 162.

139. Transfer prior to Death—When Taxable.

Decedent, by an instrument in writing dated September 13th, 1892, transferred to trustees personal property of the value of \$35,000.00, on the condition that the principal should be kept invested and during the donor's life to pay to his daughter, Angele, the sum of \$1,200.00 annually and the balance of the income to the donor. At donor's death to pay over the trust fund to said daughter, Angele, or to such persons as she might by will appoint, etc. The Court held, that the legal title to the property irrevocably passed from grantor to the trustees at the time of the delivery of the trust instrument, except as to a possible surplus of income. Angele took a vested remainder subject to defeasance. The property was transferred to take effect in possession or enjoyment at or after the death of the donor. *Matter of Cruger*, 54 App. Div. (N. Y.) 405.

140. Cases in Which Transfers Were Held Not Taxable.

See *Re Bell's Estate*, 130 N. W. (Iowa) 798. *Matter of Hess*, 110 App. Div. (N. Y.) 476, affirmed 187 N. Y. 554. *Matter of Thorne*, 60 N. Y. S. 419.

141. Transfer—Intention to Defeat the Tax.

An intention to defeat the tax by a transfer in the lifetime of decedent does not make the transfer void. The tax is not defeated. *State Street Trust Company v. Stevens*, 95 N. E. (Mass.) 851.

142. Transfer—Taxation Is Imposed at Time of Death of the Grantor.

Where property is transferred to take effect at or after death, the time of the taxable transfer is determined as of the death of the donor. *State Street Trust Company v. Stevens*, 95 N. E. (Mass.) 851.

143. Transfer by Deed Prior to Inheritance Tax Law—When Taxable.

The Transfer Tax Act (N. Y.) of 1892, Sec. 1, does not cover remainders which take effect beneficially in possession at the death of the life tenant who died while the Act of 1892 was in force, when said life tenant and remaindermen derive their title from the will of a testator who died in October, 1876. *Matter of Seaman*, 147 N. Y. 69; 87 Hun 619. According to the syllabus this case decides that subdivision 3 of Sec. 1, Act of 1892 (N. Y.), upholds a tax upon property or the transfer thereof taking effect in possession and enjoyment in 1892 under a deed executed and delivered prior to any inheritance tax legislation.

144. Other Cases Wherein the Question of Tax is Raised on Transfers Prior to Death.

In Re Maris Estate, 50 Leg Int. 458; 14 Pa. Co. Ct. Rep. 171; 3 Pa. Dist. R. 33.

Matter of Borup, 28 Misc. Rep. (N. Y.) 474.

Matter of Edwards, 85 Hun 436.

- Matter of Johnson*, 19 N. Y. Supp. 963.
Matter of Sharer, 73 N. Y. Supp. 1057.
Matter of Anthony, 82 N. Y. Supp. 789.
Matter of Peters, N. Y. Law Journal, March 25, 1909.
Matter of Reish v. Com., 42 Leg. Int. 102; aff'd 106 Pa. St. 521.
Seibert's Appeal, 110 Pa. St. 329, 1 Atl. 346.
DuBois' Appeal, 121 Pa. St. 368, 15 Atl. 641.
Davenport's Appeal, 3 Pa. Sup. Ct. Dig. 236.
Wright's Appeal, 38 Pa. St. 507.
In re Thomson's Estate, 5 Wkly. Notes Cas. 19.
Waugh's Appeal, 78 Pa. St. 436.
In re Conwell's Estate, 45 Leg. Int. 266.
Com. v. Kuhn, 2 Pa. Co. Ct. R. 248.
In re Lines' Estate (1893), 155 Pa. St. 378, 26 Atl. 728.
In re Brewer's Estate, 16 Pittsb. Leg. J. 114.
Attorney General v. Montifiore, 59 Law T. 534.
In re Micklewait, 11 Exch. 452.
In re Johnson's Estate (Surr.), 19 N. Y. Supp. 963.

145. Paragraph 4, Section 1. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall

omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

146. Power of Appointment—When Created by Will of Decedent Who Died Prior to Tax Legislation—Real Estate Converted Into Personality Before Transfer.

David Dows, Sr., died March 30th, 1880, a resident of the State of New York (before inheritance tax legislation). Part of his property was limited in trust to pay the income therefrom to his son, David Dows, Jr., during life, "and upon the death of my son, the said property, with all accumulations of interest, income and profits, shall vest absolutely and at once in such of his children him surviving, and the issue of his deceased children, as he may, by his last will and testament designate and appoint, and in such manner and upon such terms as he may legally impose. But in case my said son, David Dows, Jr., die intestate, then said property with all accumulations of income, etc., shall vest absolutely and at once in his children him surviving, share and share alike, and the issue of his deceased children, *per stirpes*, to be paid to them at the times and in the proportion following, to-wit, etc."

A similar devise was made of a share of testator's

residuary estate. The trustees had power of sale and exercised the same within the lifetime of David Dows, Jr., reducing the real estate to personal property and investing in stocks of corporations.

David Dows, Jr., died January 13th, 1899, testate, and by his will exercised the power of appointment created in him by the will of his father in favor of his three sons. By the will of David Dows, Jr., he gave to each of his sons the income of three undivided forty-eighths until his son Robert attained the age of twenty-one years or sooner died; of four forty-eighths until Robert attained the age of twenty-five years or sooner died, and nine forty-eighths until Robert attained the age of thirty years or sooner died. Thus, each son was given the income of sixteen forty-eighths or one-third of the property. At the termination of these life estates the principal was given to another son, that is to say, to B was given the principal of the share, the income of which A had been receiving; to C the principal of what had been B's share and to A the principal of C's share. Each son, instead of being given the remainder of his own share, after Robert arrived at the age of thirty years, is given the remainder in another son's share, though the shares are exactly equal.

The surrogate imposed a tax on the property passing under this power of appointment both on the life estates and on the remainders. The surrogate's order was affirmed by the Appellate Division. One of the objections raised to the order was that the tax imposed (under the Transfer Act of 1896 as amended April 16th, 1897, Ch. 284), upon transfers made under a power of appointment, is a tax on property and not on the right of succession, and therefore so much of the fund as is invested in incorporated companies was exempt from taxation

by the general statute and not subject to the Inheritance Tax. The Court held, citing *Matter of Vanderbilt*, 163 N. Y. 597, affirming 50 App. Div. (N. Y.) 246, that the theory upon which inheritance taxation is based is upheld in said cases, even if said property were converted into United States securities. *Matter of Swift*, 137 N. Y. 77; *Matter of Sherman*, 153 N. Y. 1; *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, etc.

The second objection urged was that at the time of the death of said David Dows, Sr., the property was real estate on which there was, at that time, no transfer tax as against lineal descendants of the testator. The Court held, citing *Matter of Sutton*, 3 App. Div. (N. Y.) 208, affirmed 149 N. Y. 618, without opinion, that the actual form in which the property existed at the time of testator's death determined its liability to a transfer tax and that, being real estate, it was exempt; that the same rule governs this case, but that at the time of the execution of the power of appointment under the will of David Dows, Sr., the property was personal. That the execution of the power effects the transfer and it follows that the condition or form of the property at the time of such execution must control. The third objection was that the legatees and devisees of remainders are not subject to taxation until the precedent estates terminate and the remainders vest in possession. The Court held:

"Practically each son of David Dows, Jr., is bequeathed one-third of the fund absolutely with the time of enjoyment in possession postponed. What motive dictated the curious shifting of remainders found in the will of David Dows, Jr., we do not know, nor is it necessary that we speculate thereon * * *. Still, under the statute it is plain they are presently taxable. Subdivision 4, Sec. 220 of the Tax Act, amended by Chap. 284, Laws of 1897, directs the

tax shall be imposed ‘when any such person or corporation becomes beneficially entitled in possession or expectancy.’ Section 222 of the same laws provide all taxes shall be due and payable at the time of the transfer, and that a tax upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of the transfer, shall accrue and become due and payable when the persons entitled thereto come into actual possession or enjoyment. That all of the property passing by the execution of the power of David Dows, Jr., is taxable as of the date of the execution of the power.” *Matter of Dows*, 167 N. Y. 227.

147. Power of Appointment—Transfer is Effectuated by Exercise of Power.

By the eleventh article of her will testatrix devised a certain share of her estate in trust, to hold the same for L. H., during his life, the income from said trust to be paid to said L. H., for his and his family’s use, maintenance and support. The limitation in trust further provided that upon the death of said L. H., the trustee should pay over the trust fund to such person or persons and in such manner and proportion and at such time or times as the said L. H. should specify and direct by his last will and testament, provided such testamentary disposition should be valid. In case he should die without leaving a will, such trust fund should be transferred and paid over to his children and their heirs. The Court held:

“The question presented by this appeal is whether the learned Surrogate was right in holding that this remainder was not taxable until the time comes for the exercise of the testamentary power of appointment conferred upon the life beneficiary.

In support of this determination the executors

rely upon subdivision 5 of Section 220 of Chapter 908, L. 1896, as amended by Chapter 284, L. 1897. This subdivision, so far as applicable, provides as follows:

‘Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment when made shall be deemed a transfer taxable under the provisions of this Act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.’

In construing this provision, it has been held that it is the exercise of the power of appointment and not the creation of that power which affects the transfer which the statute makes taxable. *Matter of Seaver*, 63 App. Div. (N. Y.) 283; *Matter of Walworth*, 66 *id.* 171. If this view is correct and the subdivision quoted is applicable to the 11th and 12th articles (same as 11th) of Mrs. Howe’s will, the order under review would clearly appear to be right.

The applicability of that subdivision, however, is disputed by the learned counsel for the appellant, who insists that it was repealed by implication by the enactment of Chapter 76 of the Laws of 1899, which amended Section 230 of the Tax Law (Laws of 1896, Chap. 908) by inserting therein, among other provisions, the following: ‘When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate, which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith out of the property transferred.’ The phraseology of this amendment of 1899 is not such as necessarily to embrace a case like the present, where a

testamentary power of appointment is bestowed upon the life beneficiary of a trust. While here Leavitt Howe and Edward Howe may be regarded as the original transferees of the shares devised and bequeathed in trust for their benefit, it cannot fairly be said that their rights, interests or estates are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged. Their right, interest and estate in the share or money set apart in trust for each is absolute and not dependent upon any contingency or condition whatever. They are entitled under the will to the proceeds of the fund left in trust for them during the whole of their natural lives. It would seem, therefore, that their estates do not fall within the scope of the amendment, and it may well be doubted whether the amendment was intended to apply at all to cases where a life estate is coupled with a testamentary power of appointment to be exercised at its conclusion. It is to be observed that the amendatory statute (Laws of 1899, Chap. 76) makes no change whatever in any section of the Tax Law, except Section 230. It leaves unchanged Section 220, the fifth subdivision of which, relating to powers of appointment, has already been quoted. The effect of the amendment, therefore, was the same as though one statute had been enacted containing subdivision 5 of Section 220 and Section 230 as changed in 1899. We thus have in contemplation of law an act of the Legislature containing specific directions as to the taxation of estates in regard to which a power of appointment is conferred upon the original transferee; and I do not see how it can well be held that a subsequent provision in the same statute in regard to the taxation of transfers of property, where the estates of the transferees are dependent upon contingencies or conditions, effects a repeal by implication of the specific provision relating to transfers through the instrumentality of the donee of the power.

Neither *Matter of Vanderbilt* (172 N. Y. 69) nor *Matter of Brez* (*Id.* 609) bears upon the question in controversy here. Those decisions relate wholly to

the effect of Section 230 of the Tax Law (as amd. by Laws of 1899, Chap. 76) and the opinions contain nothing in conflict with the views which have been expressed." *Matter of Howe*, 86 App. Div. (N. Y.) 286, affrmed 176 N. Y. 570.

148. Power of Appointment Created by Will of Testator Who Died Prior to Tax Legislation.

Vanderbilt died in 1885 and by his will created a trust fund wherein his son was given the income for life with power to appoint said sum to his lawful issue in such shares as by will directed. Said son died in 1899 and by his will appointed a portion of the fund to his issue. At the time of the death of Vanderbilt the succession to said fund was not taxable under the collateral inheritance tax law. By the amendment of 1897, subdivision 5, Section 220, it was provided that whenever any person shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of the amendment, such appointment shall be deemed a taxable transfer. The Court held: That the direct object of the amendment of 1897 was to make the time at which the appointee of the power became entitled to possession, the time at which the tax should be imposed. That the collateral inheritance tax law of 1885 did not constitute a contract between the State of New York and Vanderbilt. "It is never to be assumed that the State has, by any act, fettered its power of taxation unless it appears with irresistible clearness otherwise." *Matter of Vanderbilt*, 50 App. Div. (N. Y.) 246. Affirmed 163 N. Y. 597, on opinion below.

149. Tax on Transfer Effectuated by Power Created Under Will Before Tax Legislation Constitutional.

One Astor conveyed to his daughter, Mrs. Delano, on September 30th, 1848, a house and lot in New York City. Said deed provided that Mrs. Delano should have the life use of the property, and upon her death without issue to a brother and sister, or their issue, etc. The deed further conferred upon Mrs. Delano the power to appoint the property to her brothers and sister, or their issue.

On September 6, 1849, Astor transferred, in trust, certificates of the public debt of the State of Ohio amounting to \$50,000.00, with the life use thereof to his daughter, Mrs. Delano, and power of appointment in her to designate the fund by will to her brothers and sister. *Held*, Section 220, as amended in 1897, a proper exercise of legislative power and that the property appointed by Mrs. Delano, who died testate in 1902, was taxable according to her exercise of the power by will. "The right of the Legislature to impose a tax on the privilege of exercising a power by will is not affected by the fact that no such tax was imposed when the power was created." *Matter of Delano*, 176 N. Y. 486.

150. Power of Appointment — When Situs of Property Immaterial.

Caroline C. Hull died testate in January, 1874, a resident of the State of New York. She bequeathed to her son, W. J. Hull, the income of four-thirteenths of her estate during his life, with the power to appoint the principal by last will and testament or other instrument executed by him "in the presence of two or more witnesses."

At the death of Caroline C. Hull said four-thirteenths of her estate consisted of an undivided interest in real estate—"belonging to her father, Richard M. Cooper, a resident of New Jersey, but for a long time subsequent to her death the said four-thirteenths of her estate had been converted into cash and remained in that form which had been invested in bonds and mortgages on property in New Jersey."

W. J. Hull died a resident of the State of New York, April 5th, 1902, and by his will exercised the power of appointment conferred upon him by the will of his mother, Caroline C. Hull, appointing said fund to Ida M. Hull, his wife. Pursuant to the power of appointment the trustees of the estate of Caroline C. Hull paid the fund (which was in Camden County, New Jersey) to Ida M. Hull, between the 9th day of September, 1902, and the 5th day of May, 1904, the value being \$26,537.00, said payment being made pursuant to the exercise of the power of appointment. An appraiser was appointed in the State of New York and on his report the surrogate found the fund was taxable against Ida M. Hull. On appeal to the Surrogate Court of Westchester County the surrogate's order of tax was reversed. In an appeal prosecuted to the Appellate Division it was held:

"We are of the opinion that the learned surrogate has fallen into error in reversing the original decree in this matter, due to the confusion of the question of an entirely irrelevant detail in relation to the situs of the property which passed to said Ida M. Hull. The question is not, where the property was located or whether it was real or personal property, but whether the beneficiary came into its possession through the exercise of a privilege conferred by the State of New York. The Tax Law (L. 1896, Ch. 908, Sec. 220, Subd. 5, as amended by L. 1897, Ch. 284) provides 'whenever any person or corporation

shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment when made shall be deemed a transfer taxable under the provisions of this Act, etc.' It is not the property which is the subject of taxation; it is the right or privilege which the State confers upon the citizens of this State to dispose of property by will * * *. In *Matter of Dows*, 167 N. Y. 227, 231, the Court, after calling attention to certain cases decided in the United States Supreme Court, says: 'But whatever may be the technical source of title of a grantee under a power of appointment, it cannot be denied that in reality and substance it is the execution of the power that gives to the grantee the property passing under it' * * * (*Matter of Lansing*, 182 N. Y. 238-244, and authorities cited therein), it being the privilege upon the right to succession of property by means of a will that is taxed; and the subject of the litigation being within the jurisdiction of the State, it seems clear in the will of Caroline C. Hull, a resident of this State, upon the exercise of that power by Wager J. Hull, likewise a resident of this State, is bound to pay the tax imposed upon that privilege, regardless of the question of where the property to which the power related was located. Ida M. Hull gets all her rights in and to the property by reason of the exercise of the power, a privilege granted by the State of New York. * * *"
Matter of Hull, 111 App. Div. (N. Y.) 322.

151. Tax on Transfer Effected by Exercise of a Power Created Prior to Tax Legislation Constitutional.

The Supreme Court of the United States, in an opinion reviewing *Matter of Delano*, 176 N. Y. 486, said in part: "However technically correct it may be to say that the estate came from the donor, and not from the donee of a power, it is self-evident that it was only upon the exercise of the power that the estate in the plaintiffs in

error became complete. Without the exercise of the power of appointment the estates in remainder would have gone to all in the class named in the deeds of William B. Astor. Notwithstanding the common law rule that estates created by the execution of the power take effect as if created by the original deed, for some purposes, the execution of the power is considered the source of title. We cannot say that property has been taken without due process of law within the provisions of the fourteenth amendment * * *. Nor do we perceive that the effect has been to violate any contract right." *Chanler v. Kelsey*, 205 U. S. 466.

152. Power of Appointment—When Erroneous Prior Assessment Does Not Preclude Tax on Transfer by the Exercise of the Power.

Stephen Buckingham died testate a resident of New York, December 1st, 1887. By his will two trusts were created, one specific and one residuary, giving Charles Buckingham a life estate therein with power to appoint the corpus of the funds. In 1888 an appraisement was had under the Collateral Inheritance Tax Law of 1885-1887 and a tax was imposed against Charles H. Buckingham on the specific trust on the theory that Charles was invested with the corpus at the time of the death of his Uncle Stephen. A life estate was taxed to Charles Buckingham in the residuary trust. The taxes so assessed were paid. The value, however, of Charles H. Buckingham's life interest in the two trust funds was only \$42,000.00, but he had been taxed on a total of \$66,000.00. Charles Buckingham died a resident of New York, testate, May 12th, 1904, and appointed his wife, Elizabeth, as the beneficiary of both funds. In an appraisement of the estate of Charles H. Buckingham, it was urged by the

executors that the excess payment in the Stephen Buckingham estate should be applied on the tax to Elizabeth. *Held*, that the tax could not be anticipated on Elizabeth Buckingham's succession, and

"That the transfer tax which is sought to be imposed in these proceedings must be regarded as imposed upon a transfer created by the will of Charles H. Buckingham; and not by the will of Stephen M. Buckingham; that at the time of the settlement of the estate of Stephen M. Buckingham there was no law in existence authorizing the imposition of such a tax; that the imposition of such a tax was not anticipated in fact, and could not have been anticipated in the proceedings by which the Inheritance Taxes were adjusted and collected in the estate of Stephen M. Buckingham; and that the right of Elizabeth Buckingham to succeed to the fund in question is taxable as a transfer effected by the operation of her husband's will with the like effect as though such fund belonged absolutely to him and had been bequeathed to her in and by his will." *Matter of Buckingham*, 106 App. Div. (N. Y.) 13.

153. Power of Appointment—Real Estate in New York Appointed by Non-Resident Donee Taxable.

In an application to refer to the appraiser his report for further consideration it appeared that Gertrude L. Lowndes died testate, a resident of New York, and bequeathed her estate in trust, as follows: Income to be paid to her children for life and "upon the death of either of them to convey, transfer, set over and assign an equal one-fourth part, according to the provision of any will my said daughters may make, and in default of a will, then to convey, transfer and set over such equal fourth part to the issue of my said daughters."

Annie Chase was one of the daughters of Gertrude L.

Lowndes and exercised the power of appointment conferred upon her in substance, as follows:

"All the rest, residue and remainder of my estate and any and all estate or property over which I have power of disposition or appointment, and especially any estate in which I have any interest, or over which I have any such power under the will of my mother, Gertrude L. Lowndes, I give, devise and bequeath to my husband for and during his life and upon his death to my two children."

The Court held:

"The exercise of the power of appointment was the medium through which the appointees obtained their title and not by the will of Gertrude L. Lowndes (*Matter of Cooksey*, 182 N. Y. 92). The donee of the power (Annie Chase) was a non-resident of New York, but the exercise of the power comprehended the transfer of real estate situated in New York; therefore the Surrogate's Court of New York had jurisdiction of the proceeding to assess a tax upon the transfer of property passing by virtue of the exercise of the power of appointment. (*Matter of Seaver*, 63 App. Div. (N. Y.) 283.) The proceeding should be amended by entitling the appraisement as follows: 'In the Matter of the Transfer Tax upon the trust created by the will of Gertrude L. Lowndes, deceased, for the benefit of Annie L. Chase and her appointees or heirs' and when so amended the appraiser's report will be remitted to him for further consideration and report in accordance with the direction expressed in the opinion.' *Matter of Lowndes*, 60 Misc. Rep. (N. Y.) 506."

154. Donee and Appointee Non-Resident—Property Within the State.

Edward C. Lord died testate, a resident of New Jersey, in January, 1892. His will was admitted to probate in the Probate Court of New Jersey. By his will he exercised two powers of appointment by designating Emily

M. Lord, his widow, the beneficiary of the following funds:

1. Trust fund transferred by deed, delivered in March, 1873, use of property to Edward C. Lord, during life, with power to dispose of the corpus of the fund by will.

2. A trust created by the will of Susan Lord, who died in 1880, bequeathing property to Edward C. Lord during his life, with power to appoint remainder.

Emily M. Lord died a resident of New Jersey before the will of Edward C. Lord was admitted to probate. Part of the property composing the trust funds was situated in the State of New York and held by the trustees, who were residents of that State. The property situated in New York composing said two trust funds and appointed by the will of Edward C. Lord, passed by the exercise of the power of appointment to Emily M. Lord and were therefore taxable to her. *Matter of Lord*, 111 App. Div. (N. Y.) 152.

155. Mortgages Held Outside State Transferred by Non-Resident Under Testamentary Power Created by Will of Deceased Resident of New York.

Testator died a resident of New York in 1870. His will created a trust for the life of his daughter, Mrs. Sheldon, with power to appoint by will. Mrs. Sheldon died a resident of the State of Rhode Island, testate, and exercised the power of appointment created in her by the will of her father. The surviving trustee of testator's will was a resident of Rhode Island. The trust estate which was disposed of by Mrs. Sheldon's will wholly consisted of bonds secured by mortgages on real estate, which said real estate was in New York, but none

of the bonds were ever kept in New York. The Court held: "As Mrs. Sheldon, in making her will, exercised a privilege granted by her own State and not by this State, and the transfer of the property effected by the exercise of the power was beyond the reach of the New York Tax Law, the State (N. Y.) had no dominion over the property transferred." *Matter of Fearing*, 200 N. Y. 340.

156. Power of Appointment—When Not Exercised.

Testatrix died December 25th, 1883, before any Inheritance Tax legislation in New York. She devised her residuary estate to her husband for his life with power in him to appoint the corpus by will. The husband died September 16th, 1894, testate, and his will contained the following provision: "I direct my executors to keep the estate of my deceased wife separate from my estate, and to distribute her estate according to the provisions of her last will and testament, by delivering the same to the executors named in her will, for that purpose." This was the only section claimed to show an execution of the power. The Court held: That the husband's will was in effect a relinquishment or renunciation of the power of appointment. That it was a declaration of his purpose not to exercise the power, but to allow the property to pass under the will of his wife. The property passing under the will of a person who died prior to Inheritance Tax legislation is not taxable. *Matter of Langdon*, 153 N. Y. 6.

157. When Appointee Takes Under Will Creating Power and Not by Exercise of Power.

Testator left one-fifth of his property in trust for his son for life, remainder to the son's heirs "or to such

person or persons as such child may appoint in his last will and testament." The son died testate, appointing his own children as beneficiaries. *Held*, that the children of the son did not take by their father's will through the exercise of the appointment, but that they took from the grandfather (original testator). No transfer tax law having been passed at the time of the death of said testator (grandfather), no tax is assessable. *Matter of Backhouse*, 110 App. Div. (N. Y.) 737. See *Matter of Cooksey*, 182 N. Y. 92.

158. When Exercise of Power Is Mere Form Beneficiary Takes by Will Creating Power.

A resident of New York died testate in August, 1875, limiting his residuary estate for the benefit of his wife and daughters. Anna K. Shaw, one of the daughters, was given one-half of one share absolutely, the other half to trustees with directions to pay the income therefrom to said Anna K., during life, and on her death to transfer the principal of said one-half to her issue, "and in case no such issue shall survive her, then to pay and transfer the said last mentioned one-half share to such person or persons as my said daughter shall, by her last will, appoint, and in default of appointment, to daughter C. H. Crafts, if she shall survive the said Anna, etc."

Anna K. had no children and died without issue in March, 1907, leaving her sister, C. H. Crafts, surviving. The Court held: The remainder in said one-half vested on the death of testator in 1875 in C. H. Crafts, his daughter, subject to be divested by the birth of issue to Anna K., or by the execution of the power. Section 31 of the real property law provides that the existence of an unexecuted power does not prevent the vesting of a future estate. C. H. Crafts was a person in being at the

death of her father and her interest was therefore a vested remainder. The execution of the power only took effect on the death of Anna K. After the will of Mrs. Shaw was admitted to probate C. H. Crafts, by a formal instrument in writing duly verified, claimed the trust funds under the will of her father, who died in 1875, and in no respect did she take under the action of her sister, Anna K. The exercise of a power which leaves everything as it was before is a mere form with no substance. (*Matter of Cooksey*, 182 N. Y. 92, distinguished.) *Matter of Haggerty*, 128 App. Div. (N. Y.) 479. Affirmed 194 N. Y. 550, without opinion.

159. When Appointee Elects to Take by Will Instead of Power.

Decedent died a resident of New York in 1869, and provided by his will that his estate should be divided into as many equal portions as there were surviving children; one of the portions was given to each of said children in trust for the life of each child and after death to the heirs at law of such child, with power to dispose of the respective remainders among their heirs and collateral relatives in such proportion and manner and limitations as they saw fit. Jeanette S. Lansing, one of the surviving children, died in 1904, and by her will appointed her only child, Jeanette Lansing McVicker, as the beneficiary of one share. The Court held: Although the power was exercised (by Mrs. Lansing) in form, the rights of Mrs. McVicker were already vested. The power was to dispose of the remainder, but the remainder was not disposed of, as it continued where it was. The attempt to execute the power was not effective because it did nothing. An appointee under a power has the right of election, the same as a grantee under a deed, and Mrs. Mc-

Vicker elected to take under the will of her grandfather, who died in 1869. Held not taxable. *Matter of Lansing*, 182 N. Y. 238.

160. Value of Property Not Diminished by Life Estate Previously Taxed.

In an appraisement of the estate of decedent, who died in August, 1892, the surrogate, by approval of an appraiser's report, determined the value of a fund passing to testator's daughter to be \$27,000.00 and the life estate of the daughter to be \$22,000.00, leaving a remainder of about \$5,000.00 which was not taxed, as it could not then be determined to whom it would pass. The life tenant (daughter) died in 1899 testate, and exercising a power to appoint said fund which was created by her father's will. In a second appraisement, after the death of the life tenant, it was urged that the tax should be one per cent. upon the original value of the remainder, which was about \$5,000.00. The surrogate held that the transfer of the fund by the exercise of the power effected a complete transfer of the entire property and that said fund should not be diminished by the valuation of the life estate previously taxed. *Re Tucker's Estate*, 59 N. Y. S. 699.

161. Relationship of Donee of Power to Appointee Determines Rate of Tax.

Matter of Seaver, 71 N. Y. Supp. 544.

Matter of Walworth, 72 N. Y. Supp. 984.

Matter of Rogers, 75 N. Y. Supp. 835.

162. Rate of Taxation Governed by Law in Force at the Time of the Exercise of the Power.

Walworth's Estate, 72 N. Y. Supp. 984.

163. Exemptions—Relationship—Rates of Tax—When Tax Accrues—All Questions Determined as of Date of Transfer.**164. Tax Accrues at Death of Decedent.**

The descent of property in Illinois, whether by inheritance or devise, is regulated entirely by statutory provisions. (*Kochersperger v. Drake*, 167 Ill. 122.) All the property owned by any person at his decease passes either under the Statute of Descent to the persons mentioned in that statute, or under the Statute of Wills, to his devisees.

The Inheritance Tax Law provides that all property so descending, whether under the Statute of Wills or the Statute of Descent, shall be subject to a tax at certain specified rates at the fair market value thereof, which shall be due at the death of decedent. The tax is not upon the estate of decedent, but upon the right of succession, and it accrues at the same time the estate vests—that is, upon the death of the decedent. Questions may arise as to the persons in whom the title vests, and such questions may affect the amount of the tax and the person whose estate shall be chargeable with it; but when those questions are finally determined their determination relates to the time of the decedent's death. No change of title, transfers or agreements of those who succeed to the estate, among themselves or with strangers, can affect the tax. All questions concerning it must be determined as of the date of the decedent's death. *Re Estate of Graves*, 242 Ill. 212.

165. Beneficial Interest—Transfer Must Be Effected While Tax Law Is In Force.

The beneficial interest is taxable. The tax does not

affect rights accruing by the death of a decedent prior to inheritance tax legislation. *Matter of Seaman*, 147 N. Y. 69.

166. Rate of Tax Determined by Relationship.

The rate of tax is determined by the relationship of the decedent to beneficiary. An assignment by the beneficiary of his interest presupposes an ownership and the succession is in the beneficiary and not the assignee. *Matter of Cook*, 187 N. Y. 253.

167. Exemption.

The beneficiary claiming exemption must point to the provision of the law sustaining his claim. *Kavanaugh's Estate*, 6 N. Y. S. 669.

168. Exemption—Statutory Exemption Relates to the Share of Beneficiary.

In reviewing an act of Congress of June 13th, 1898, Chap. 448, usually spoken of as "The War Revenue Act" (20 Stat. 448), so far as the same relates to Sections 29 and 30, which provides for a tax on "legacies and distributive shares of personal property," the Court held, among other things, as follows:

1. That the tax is on the legacy or distributive share, the rate being determined by the relation of the legatee to the decedent.

2. That the money exemption does not relate to the estate of decedent, but to the share of the legatee or distributee.

Knowlton v. Moore, 178 U. S. 41.

169. Exemptions—Claimant Must Show Exemption.

A person claiming exemption must show the particular

statute granting it. An exemption will not be presumed. *Matter of Moore*, 97 Sup. Ct. Rep. (N. Y.) 162.

170. Exemptions—Not Favored.

The provisions of a law granting exemptions are to be strictly construed against a claimant. The beneficiary must be clearly within the statutory language. Dos Passos on Inheritance Tax Law, 2d Ed. 74; *Re Fayerweather*, 143 N. Y. 119 (38 N. E. 278); *Re Prime*, 136 N. Y. 347; *People v. Cameron*, 124 N. Y. S. 949; *Re Arnot's Estate*, 130 N. Y. S. 499.

171. Lineal Descendants—Children of Adopted Child.

“Lineal descendants” means the direct descendants of the decedent whose death effects the transfer. It does not refer to nephew or niece unless expressly stated in the statute. (*Matter of Miller*, 45 Hun 244; *Matter of Smith*, 45 Hun 90.) The children of adopted children or of persons to whom the testator stood for ten years prior to death in the mutually acknowledged relation of a parent are not lineal descendants within the statute and are not entitled to an exemption from taxation under the Inheritance Tax Law of New York. (*Matter of Moore*, 90 Hun. 162; *Matter of Bird*, 32 St. Rep. 899.) Greene’s Law of Taxable Transfers, 2nd Ed. 57.

172. Particular Rates of Taxation and Exemptions Under the Illinois Law in Force July 1, 1895.

Beneficiaries or transferees are divided into three classes for the purpose of taxation. The first class consists of those having some direct relationship by blood or marriage with decedent or his family, excepting grand-

parents. The second class consists of the collateral relatives further removed than brothers and sisters. The third class comprehends those farther removed in relationship, strangers in blood and those institutions and corporations not expressly exempt by law.

173. Transfers Under the Illinois Law Effected Prior to July 1, 1909—Rates and Rights of the Parties.

If a transfer is effected prior to July 1st, 1909, and on or after July 1st, 1895, the rates and rights of the parties are determined by the law in force July 1st, 1895. The exemption to beneficiaries of the first class is \$20,000.00 and the rate 1% on the total amount or value taken in excess of \$20,000.00.

Beneficiaries of the second class are each exempt \$2,000.00 and taxable at 2% on the excess thereof, regardless of the amount or value of the property taken.

Beneficiaries of the third class have no statutory exemption, but no tax is assessable unless the share of each beneficiary equals the value of \$500.00. When the share equals the value of \$500.00 and does not exceed \$10,000.00 the rate is 3%; when the share is over \$10,000.00 but does not exceed \$20,000.00 the rate is 4%. When the share is over \$20,000.00 and does not exceed \$50,000.00 the rate is 5%; when the share exceeds \$50,000.00 the rate is 6% on the total value of the property taken by each beneficiary.

174. Illinois Law in Force July 1, 1909—Rates and Exemptions.

The Inheritance Tax Law in force July 1st, 1909, made no change in the classification for taxation but increased the rates, as follows:

First Class Beneficiaries: The father of deceased is

exempt \$20,000.00. If a father receives \$20,000.00 or less, his succession, share, interest or transfer is not taxable. If the total of his gifts, transfers, shares or succession exceeds \$20,000.00 and equals \$100,000.00 or less, \$20,000.00 is exempt and the rate of tax is 1% on the excess thereof.

Illustration:

All personality.....	\$82,000.00
One-half real estate...	14,000.00
Dower in other half...	4,000.00

\$100,000.00, exemption \$20,000,
Rate 1%, Tax \$800.00

If a father receives over \$100,000.00 he is exempt \$20,000.00 and the rate of tax is 2% on all property received over \$20,000.00.

Illustration:

All personality.....	\$94,000.00
One-half real estate...	46,000.00
Dower in other half...	10,000.00

\$150,000.00, exemption \$20,000,
Rate 2%, Tax \$2,600.00

The mother, husband, wife, children, grandchildren, brothers and sisters of decedent have the same exemptions and are taxed at the same rates as the father of decedent. The wife or widow of the son, and husband of the daughter, of decedent have the same exemptions and are taxable at the same rates as a father of decedent.

175. Husband of a Daughter Who Died Before Testator.

The husband of a daughter of a testator has the same

exemption as the daughter. The fact that the daughter died before the testator is immaterial. *Matter of Woolsey*, 19 Abbott's N. C. 232. *Matter of McCarvey*, 6 Dem. 145.

176. When Husband of Deceased Daughter is Remarried.

Under the New York Transfer Act of 1892 a bequest to the husband of a daughter is not affected, so far as taxation is concerned, by the death of the daughter, prior to her father, and the remarriage of the husband of said deceased daughter. *Ray's estate*, 35 N. Y. S. 481.

177. Widow of Adopted Son Is "Widow of a Son."

Under the Transfer Tax Law of New York, the words "widow of a son" cover the widow of an adopted son. *Matter of Duryea*, 128 App. Div. (N. Y.) 205.

178. Adoption—When Effectuated in Foreign State Entitles Beneficiary to Exemption.

A testator, who died in September, 1899, transferred "to my adopted son Edward K. Butler, 500 shares of stock" of the value of about \$50,000.00. Edward K., was adopted by decedent and his wife under the laws of the State of Massachusetts. *Held*, that the exemption to adopted children was not confined to those adopted under the laws of New York, but was to be extended to children adopted under the laws of other States when such laws corresponded to the laws of the State of New York. *Matter of Butler*, 65 Sup. Ct. Rep. (N. Y.) 400.

179. Children of an Adopted Child Are "Lineal" Descendants of Decedent.

The Court of Appeals of New York in passing upon the question whether the children of an adopted child of

testator were lineal descendants of such testator, said: "A lineal descendant is one who is in the line of descent from a certain person, but since the Domestic Relations Law went into effect, not necessarily in the line of generation." *Held*, that children of an adopted child were included under "any lineal descendant of such decedent." L. 1896. *Matter of Cook*, 187 N. Y. 253. 114 App. Div. (N. Y.) 718, reversed.

180. Child of Adopted Child—When Taxable.

Children of an adopted child are not designated as exempt by the Inheritance Tax Act. Such children are taxable as strangers. *Matter of Moore*, 90 Hun 162. *Matter of Fisch*, 34 Misc. Rep. (N. Y.) 146. *Matter of Bird*, 32 N. Y. St. Rep. 899.

181. Relation of Parent to Beneficiary—Must Be Clearly Shown.

By decedent's will property was transferred to his "nieces". An objection was made to the tax assessed by the surrogate on the ground that decedent stood in the acknowledged relation of parent to such nieces. The evidence disclosed that the beneficiaries were referred to as "nieces" and that the beneficiaries referred to decedent as "uncle". No relationship of parent and child was shown except by inference or conclusion. *Held*, that no person is impliedly exempt from taxation and that the statute is to be strictly construed against the claimant. That the relationship was not established. *Matter of Deutsch*, 107 App. Div. (N. Y.) 192.

182. Acknowledged Relation of Parent.

John H. Beach died testate, a resident of New York, September 28th, 1893, and by codicil devised to appellee

lant, Caroline A. James, real property valued at \$100,000.00 and personal property worth \$4,500.00. Testator was sixty-eight years of age, a widower and died without issue or lineal descendants. In 1881 appellant (Mrs. James) and her husband, at the solicitation of Beach, became members of his family (appellant at that time being over thirty years of age), under an oral understanding between them that Mrs. James should be regarded and treated by Beach as his daughter and that she should regard him as her parent. Beach and Mr. and Mrs. James lived in the same house as one family; Mrs. James managed the affairs of the household and Beach defrayed the household expenses. The testator introduced appellant as his daughter. The relation of parent and child was continued until testator's death.

It was contended by respondent that Section 2, Chapter 399, Laws of 1892, was intended to cover only illegitimate children as decided by the General Term in *Matter of Hunt*, 86 Hun 232.

Held, that the exemption covers any person related by blood, or a stranger, adult or minor, to whom a decedent stood in the relation of parent for the period provided by law. (*Hunt case not followed.*) Reversing *Matter of Beach*, 19 App. Div. (N. Y.) 630. *Matter of Beach*, 154 N. Y. 242.

183. Parent and Child—Mutually Acknowledged Relation.

Chapter 399, Laws 1892 (N. Y.) providing for an exemption in certain cases to a beneficiary to whom a decedent, for not less than ten years prior to death, stands in the mutual acknowledged relation of parent, covers persons not adopted as children. (*Re Hunt's Estate*, 33 N. Y. S. 256, not followed. *Re Stillwell's Estate*, 34

N. Y. S. 1123. *Matter of Nichols*, 98 Sup. Ct. Rep. (N. Y.).
134.

**184. Children of Person to Whom Decedent Stood
in Relation of Parent—Stranger in Blood.**

Caroline C. Moore died testate a resident of New York, May 28th, 1887. By the ninth clause of her will Augusta C. Graves and the seven children of Augusta C. Graves were made residuary legatees of Mrs. Moore's property. A construction of said ninth clause of decedent's will, by the Court of Appeals, 126 N. Y. 636, it was held that Augusta C. Graves and her children each took a one-eighth of the residue. In an Inheritance Tax appraisal under the Law of 1887 the surrogate assessed an Inheritance Tax upon Mrs. Grave's children as strangers in blood but exempted Mrs. Graves as a person to whom decedent stood in the mutually acknowledged relation of parent for at least ten years. On appeal from the Surrogate Court it was held that the Act of 1885 as amended in 1887 did not exempt the children of a person to whom the decedent stood in the relation of parent, and therefore, that the children of Mrs. Graves were taxable as strangers in blood. *Matter of Moore*, 90 Hun 162, 35 N. Y. S. 782.

**185. Children of Person to Whom Decedent Stood
in Relation of Parent are Taxable.**

In an appeal by one Bowen in the Estate of Mary Beecher, deceased, from an order of tax entered by the County Judge of Cook County, Illinois, the Court held, that under Section 1, Inheritance Tax Laws of Illinois, 1895, children of a person to whom the decedent (Mary Beecher) stood in the relation of parent were strangers in blood to decedent and taxable at the rates provided for

strangers. *Bowen v. People*, Cook County Court Case No. 24872.

186. Act of 1909 (Illinois) Limits Exemption.

The Illinois Law of 1909, revising the Law of 1895, limits the \$20,000.00 exemption to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, by adding: “*Provided*, however, such relationship began at or before said person’s fifteenth birthday and was continuous for said ten years thereafter: *And, provided, also*, that the parents of such person so standing in such relation shall be deceased when such relationship commenced.”

It is to be noted that to constitute this relationship certain facts must exist:

- 1st. The relationship must begin at or before the “person’s” fifteenth birthday.
- 2nd. The parents of the person must be dead when relationship commenced.
- 3rd. The relationship must be continuous for ten years after it commenced.
- 4th. It must be acknowledged and exist at the time of death.

The burden of proof is based upon the person claiming exemption to prove all material facts which will establish the exemption. *Matter of Davis*, 98 App. Div. (N. Y.) 546, 184 N. Y. 299.

187. Both Parents Must Be Dead—Stepchild a Stranger.

The word “parents” in Section 1 of the Inheritance Tax Act of 1909 (Illinois) is plural and means that both of the parents of the beneficiary claiming exemption must be dead when the relationship commenced. *Re Stebbins Estate*, 103 N. Y. S. 563; *Re Harder Estate*, 108 N. Y. S.

154; 124 App. Div. (N. Y.) 77; *Re Wheeler's Estate*, 100 N. Y. S. 1044; *Re Edwin Walker Estate*, Cook County Court (Illinois), Appraisement No. 3355.

Under the above cases a stepchild could not come within the exemption, as one of the parents of said stepchild must have been living when the relationship commenced.

188. Grandmother Not a "Lineal Descendant"— Taxable as Stranger.

"The next question is, whether the grandmother was subject to the Collateral Inheritance Tax, under the Act of 7th April, 1826, Purdon 148. The only persons exempted from the operations of that statute are carefully enumerated. They are father, mother, husband, wife, children and lineal descendants, born in lawful wedlock. Whoever else takes an estate of inheritance must suffer the tax. The argument here is that the case of a grandmother is *casus omissus*, but we cannot perceive the slightest ground for thinking the Legislature meant to exempt her. It is true that the Act is called a 'Collateral Inheritance' tax law, and that a grandmother is a lineal and not a collateral relative, but when the enacting clause of a statute embraces 'all estate, real, personal and mixed, of every kind whatsoever, passing from any person who may die seized or possessed of such estate,' and then excepts only such takers of the estate as are enumerated in the excepting clause, it would be contrary to all rules of construction to enlarge the excepting at the expense of the enacting clause. '*Expressio unius, exclusio alterius*,' applies here. We must presume the Legislature enumerated all takers they meant to except. The occasion of the law was suggested by those oblique inheritances which we call collateral, which, though provided for by our intestate laws, are not the common course of estates, not the natural tendencies of property. When such exceptional instances should occur, the Legislature deemed it fair to tax the lucky

inheritors altogether beyond the usual rate of taxation, and hence this tax law. Grandmothers are unusual inheritors, even more so than aunts and uncles; and having enjoyed the chances of the two generations between which she stood, there would seem to be no especial reason why that which comes to her from the second generation below her should be exempt from public burthens. We think it is as clear that she is within the spirit and reason of the statute as she is within the letter." *McDowell v. Adams et al.*, 45 Pa. 430.

189. Second Class Beneficiaries—Uncle, Aunt, Niece or Nephew, or Any Lineal Descendant of the Same.

If any person in this class receives over \$2,000.00 and not to exceed \$20,000.00, an exemption of \$2,000.00 is allowed by law, and the rate is two per cent. on the excess of \$2,000.00.

Illustration:

Legacy	\$20,000.00
Exempt	2,000.00
<hr/>	
\$18,000.00 at 2%, tax \$360.00	

If any person in this class receives over \$20,000.00 an exemption of \$2,000.00 is allowed by law and the rate of tax is four per cent. on the excess of \$2,000.00.

Illustration:

Legacy	\$25,000.00
Exempt	2,000.00
<hr/>	
\$23,000.00 at 4%, tax \$920.00	

190. Contra.

It has been urged before the County Court of Cook County, Illinois, that the proper application of rates to

beneficiaries of the first class (father, mother, child, widow, etc.) is to assess a one per cent. rate on the excess of \$20,000.00 up to \$100,000.00 and a two per cent. rate on all amounts over \$100,000.00. For illustration:

John Jones, husband.	
All personal property	\$90,000.00
One-half real estate	46,000.00
Dower in other half	14,000.00
Transfer in contemplation of death of decedent	10,000.00
Transfer to take effect at death of de- cedent	15,000.00
	<hr/>
	\$175,000.00
\$100,000.00	
20,000.00 (exemption)	
	<hr/>
\$ 80,000.00 at one per cent.....	\$ 800.00
75,000.00 at two per cent.....	1,500.00
	<hr/>
Total tax.....	\$2,300.00

Such contention would also apply to the second class. This view of the law was not upheld, the County Court holding as illustrated in the examples given in the foregoing paragraphs.

191. Third Class—Strangers in Blood, Etc.

If \$500.00 or more is received by each beneficiary the transfer thereof is taxable as follows: The law does not provide for an exemption, but a limitation of the minimum amount taxable.

\$500.00 and over and not exceeding \$10,000.....	3%
Transfer of over \$10,000 and not exceeding \$20,000..	4%
Transfer of over \$20,000 and not exceeding \$50,000..	5%
Transfer of over \$50,000 and not exceeding \$100,000.	6%
Transfer of over \$100,000.....	10%

192. Exemptions—\$500 a Limitation, Not an Exemption.

The Collateral Inheritance Tax Act of 1885 (N. Y.) as amended in 1887, providing that "an estate which may be valued at a less sum than \$500.00" shall be exempt from taxation, was not intended to exempt all legacies or bequests exceeding that sum to the extent of \$500.00. The intention was to place a minimum limitation on the amount taxable. If the property transferred equals or exceeds \$500.00, it is taxable without an exemption. *Matter of Sherwell*, 125 N. Y. 376; *Estate of Bird*, 32 N. Y. St. Rep. 899.

193. Exemptions—\$500.00 a Limitation.

The \$500.00 limitation provided by the New York Act of 1885 was not intended to apply to the estate of decedent, but rather to fix the minimum value of a bequest or legacy that shall be taxable. *Matter of Howe*, 112 N. Y. 100.

CHAPTER III.

DATE OF VALUING PROPERTY, LIFE ESTATES, ANNUITIES AND REMAINDERS.

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| <p>194. Section Two.</p> <p>195. When Life Estate is Exempt
—Exemptions to Certain
Lineals Abolished.</p> <p>196. Discrimination Between Re-
mainders to Lineal and Col-
lateral Heirs.</p> <p>197. Constitutional — Discrimina-
tion Between Beneficiaries.
Property Transferred with-
out the State at Death of
Donor.</p> <p>198. Five Per Cent. Rate for Valu-
ing Annuities and Estates
for Life or Years.</p> <p>199. Value of Property Transferred
—Fixed as of what time.</p> | <p>200. Remainders and Life Estates
—how Determined.</p> <p>201. When Life Estate Deducted
and not Taxable.</p> <p>202. Value of Remainder—How De-
termined.</p> <p>203. Remainder — Value of — How
Determined.</p> <p>204. Life Estate—How Determined
after Decease of Life Ten-
ant.</p> <p>205. Life Estate—Valuation when
Tenant Predeceases Ap-
praisement.</p> <p>206. Bond may be Given by Bene-
ficiary not in actual Enjoy-
ment or Possession.</p> |
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194. Section Two. When any property or interest therein or income therefrom shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period, the property of the decedent so passing shall be appraised immediately after the death of the decedent, and the value of the said life estate, term of years or period of limitation shall be fixed upon mortality tables, using the interest rate or income rate of five per cent.; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the fair market value of the property so limited, and the tax on the several estate or estates, remainder or remainders, or interests, shall be immediately due and payable to the treasurer of the proper county, together with interest thereon, and said tax shall accrue as pro-

vided in Section Three (3) of this act, and remain a lien upon the entire property limited until paid; provided, that the person or persons, body politic or corporate, beneficially interested in property chargeable with said tax, elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person or persons, or body politic or corporate, shall give bond to the People of the State of Illinois in a penal sum three times the amount of the tax arising from such property, limited with such sureties as the County Judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the County Clerk of the proper county; provided, further, that such person or persons, body politic or corporate, shall make a full verified return of said property to said County Judge and file the same in his office within one year from the death of the decedent, with the bond and sureties as above provided: and, further, said person or persons, body politic or corporate, shall renew said bond every five years after the date of the death of decedent.

195. When Life Estate Is Exempt—Exemptions to Certain Lineals Abolished.

Lineals invested with estates for life or years with remainder over to collaterals or strangers were exempt from taxation under Section 2 of the Law of 1895. *Ayers v. Chicago Title & Trust Company*, 147 Ill. 42; *Billings v. People*, 189 Ill. 472 (Section 2 of Act of 1895 is omitted from Law of 1909).

196. Discrimination Between Remainders to Lineal and Collateral Heirs.

On the question whether Section 2, Law 1895, exempted both life estates and remainders, regardless of relationship of remaindermen to testator, and further that if Section 2 was construed to exempt lineals when the remainder went to a collateral, that the statute was unconstitutional, the Court held: It is said that the statute discriminates between life tenants with remainder to lineal descendants and life tenants with remainder to collateral heirs, by imposing a tax on the first and excluding the second from its operation. But we cannot see that this is a mere arbitrary exaction from one class, while another class, which cannot be differentiated from it, is allowed to go untaxed. A life estate with the fee descending in the lineal line might well be more desirable than a life estate with remainder to collateral heirs or strangers in blood. At any rate there is a sufficient difference upon which the Legislature could, without transcending its power, base a classification. *Billings v. The People*, 189 Ill. 472.

197. Constitutional—Discrimination Between Beneficiaries—Property Transferred Without the State at Death of Donor.

A decedent who died in 1907 a resident of New York did, in 1903, transfer stocks and bonds to her three children; three-quarters of the income from the same was made payable to the children and one-quarter of the income was reserved to the donor (decedent). Although it had been settled by decisions that the reservation of an income from such a transfer brought the same within the Transfer Tax Law, yet it was urged that said Transfer Tax Law was unconstitutional on the ground of dis-

crimination between beneficiaries. It was also contended that the trust property was not within the jurisdiction of the State of New York for the reason that it was located without that State at the time of death of decedent. The Court held: That the discrimination between beneficiaries was not unreasonable and that it was within the power of the Legislature to single out classes for taxation and leave other classes exempt, or, taxable at a different rate. The fact that the property was without the State did not affect the liability for the tax in New York. *Matter of Kenney*, 194 N. Y. 281.

198. Five Per Cent. Rate for Valuing Annuities and Estates for Life or Years.

Section 2, L. 1909 (Illinois) fixes an arbitrary rate of five per cent. to be used in determining the present value of annuities and estates for life or years.

199. Value of Property Transferred—Fixed As of What Time.

All property transferred is appraisable immediately after the death of decedent, and as of the date of death. *Re Graves*, 242 Ill. 212.

200. Remainders and Life Estates—How Determined.

The value of a remainder is determined by subtracting the present value of dower or estate for life, years or annuity from the corpus of the fund upon which the same is predicated. The difference, or the sum remaining, is the present value of the remainder. *People v. Nelms*, 241 Ill. 571. (See example on page 343.)

201. When Life Estate Deducted and Not Taxable.

In passing upon the effect of Section 2 of the Inherit-

ance Tax Law of Illinois, in force July 1st, 1895, the Court held that a life estate or a life use to lineals with remainder to lineals effected a tax upon both the life estate and the remainders. That it was only in case where a life estate was limited to a lineal with remainder to collateral or stranger that the life estate was exempt and the remainder taxable. *Re Kingman*, 220 Ill. 563. *Ayers v Chicago Title & Trust Co.*, 187 Ill. 42.

202. Value of Remainder—How Determined.

The value of a vested remainder is determinable and taxable at the date of death of decedent. The remainder is determined by subtracting the present value of the life estate from the property limited. *People v. Nelms*, 241 Ill. 571. *In re Lange*, 55 N. Y. S. (89 St. Rep.) 750; *Matter of Bogert*, 25 Misc. Rep. (N. Y.) 466; 55 N. Y. S. (89 St. Rep.) 751.

203. Remainder—Value of—How Determined.

The present value of the interest of a widow in property limited during widowhood, should be deducted from the corpus of the trust in order to ascertain the remainder, which is the difference between the two. (L. 1892.) *Matter of Sloane*, 154 N. Y. 109.

204. Life Estate—How Determined After Decease of Life Tenant.

To determine the present value of a life estate under the Transfer Tax Law of 1887, the methods and tables of mortality used by the State Insurance Commissioner should be employed. *Re Jones*, 59 N. Y. S. 983.

205. Life Estate—Valuation When Tenant Pre-deceases Appraisement.

“Where a tenant for life dies before or during the

appraisement, the mortality tables are the basis of determining the value of life estate, and not the actual duration of life measured between the date of tenant's death and testator's death. One of the reasons given for this view is that the law fixes an arbitrary method of determining, for taxation, the value of a life estate and remainder." McElroy on Transfer Tax Law, 2nd Ed. 450-453, citing *Matter of Jones*, 28 Misc. Rep. (N. Y.) 356-59; N. Y. S. 983.*

206. Bond May Be Given by Beneficiary Not In Actual Enjoyment or Possession.

Section 2, Laws of Illinois, 1909 (and 1895) provides that the tax on all interests and remainders shall remain a lien upon the entire property limited until paid. Beneficiaries not in actual possession and enjoyment may elect not to pay until possession and enjoyment is effected by giving a bond within one year of the death in three times the amount of the tax "arising from such property, limited" renewable every five years after death of decedent.

A strict construction of the words "arising from such property limited" would seem to necessitate each beneficiary in the corpus to give a bond in three times the amount of the total tax arising therefrom.

Unless some arbitrary rule exists inhibiting a more reasonable application of this language to the facts in each case, it would appear that a safe and reasonable interpretation would be that each beneficiary or trustee could give a bond in three times the amount of his particular tax or taxes, as the lien would still attach to the whole property limited, and it would seem that the intention of the Legislature being to fully protect the people in collection, the end is gained by a bond on each particular tax fixed.

*But see *Re Whites Est.*, 134 N. Y. S. 281.

CHAPTER IV.

WHEN TAX IS DUE—INTEREST.

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| <p>207. Section Three.</p> <p>208. Tax—is Due and Payable at Death.</p> <p>209. Tax Paid by Whom?</p> <p>210. Interest is chargeable from death — Tax must be Paid within six months to obtain discount and avoid interest.</p> <p>211. County Court cannot go Outside of Statute to Grant Relief.</p> | <p>212. Courts—Cannot Pass on the Wisdom of Legislative Policy.</p> <p>213. Interest—Rate Determined by Law in Force at Death of Testator.</p> <p>214. Interest — on Estates Postponed for Taxation.</p> <p>215. Deposit to save Discount and Interest.</p> |
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207. Section Three. All taxes imposed by this Act, unless otherwise herein provided for, shall be due and payable, at the death of the decedent, and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes are not paid: Provided, That if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in Section 2 of this Act, for the payment of said tax, together with interest.

208. Tax—Is Due and Payable at Death.

The tax is not upon the estate of the decedent but upon the right of succession, and it accrues at the same time the estate vests—that is, upon the death of the decedent.

In re Graves, 242 Ill. 212; *Nat. Safe Dep. Co. v. Stead*,

250 Ill. 584; *Provident Hospital v. People*, 198 Ill. 495; *Re Sanford's Estate*, 133 N. W. 870 (Neb.).

209. Tax Paid By Whom?

Each beneficiary must pay the tax assessed on his succession. *Matter of Hoyt*, 37 Misc. Rep. (N. Y.) 720; *Matter of Vanderbilt*, 172 N. Y. 69.

210. Interest Is Chargeable From Death—Tax Must Be Paid Within Six Months to Obtain Discount and Avoid Interest.

Taxes must be paid within six months from the death of decedent to obtain discount and avoid interest. An appraisement of the estate of Coddington Billings in the County Court of Cook County presented the following facts. Decedent died intestate, a resident of Cook County, in January, 1896. Letters of Administration were issued in February, 1896, and an inventory was filed by the administrators in June, 1896, showing personal property \$271,000.00 and real estate \$39,000.00.

On May 31st, 1898, an Appraiser was appointed by the County Judge of Cook County, who returned his report on July 16th, 1898, which was approved by the County Judge, reporting that a chancery suit was pending in the Circuit Court of Cook County, involving the ownership of all the property inventoried and that it was impossible to determine until the termination of the chancery suit, what property, if any, the decedent owned at death or the value thereof, and recommended the appraisement be deferred until such time as the value of decedent's estate could be determined.

The County Judge thereupon entered an order deferring the appraisement "until the litigation is settled or until the further order of this Court." The said litiga-

tion was determined July 6, 1906, settling the property interests of decedent at death, and on March 30th, 1909, the County Judge of Cook County appointed another Appraiser, who shortly returned a report finding a total net estate of \$85,054.00, which said report was approved by the County Judge and the tax fixed at \$583.23, plus interest at six per cent. from January 24th, 1896 (date of Billing's death) to date of payment.

It was argued that an impossibility preventing a valuation and determination of tax within six months from the death should eliminate interest during the pendency of the litigation and that interest should be chargeable from July 6th, 1906, when the litigation was determined. The County Court ordered the collection of interest from the date of death.

On this subject see: *People v. Rice*, 40 Col. 508, 91 Pac. 33; *Shelton v. Campbell*, 109 Tenn. 690; *Commonwealth v. Smith*, 20 Pa. St. 100; Commonwealth's Appeal, 34 Pa. St. 204; *Re Sanford's Estate*, 133 N. W. 870 (Neb.).

211. County Court Cannot Go Outside of Statute to Grant Relief.

Courts cannot go outside of a statute to grant relief from the express terms of a statute charging interest. *Re Louisa Del Busto*, 23 Wkly. Notes Cases, 111; *Re Fayerweather*, 143 N. Y. 114; *Re Stewart*, 131 N. Y. 274; *Re Platt's Estate*, 20 N. Y. S. 396; *Re Prout's Estate*, 3 N. Y. S. 831; *Miller's Estate*, 182 Pa. 157.

212. Courts—Cannot Pass On the Wisdom of Legislative Policy.

As to the question of Legislative policy, the Courts have no concern. As to the question of Legislative power

there is a judicial duty of inquiry and determination. *Gautier v. Ditmar*, 129 N. Y. S. 834; *People v. Rice*, 40 Col. 508.

213. Interest—Rate Determined by Law in Force at Death of Testator.

“Where the rate of interest upon unpaid taxes was changed by the Law of 1892, interest upon taxes accruing before the passage of that Act must be charged according to the old law. (*Matter of Milne*, 76 Hun 328; *Matter of Moore*, 90 Hun 162.)” Greene’s Taxable Transfers, 2nd Ed. 67.

214. Interest—On Estates Postponed for Taxation.

Under the Illinois Act of 1895 the Supreme Court determined in *People v. McCormick*, 208 Ill. 437, and *Billings v. People*, 189 Ill. 472, that no taxes could be assessed until the beneficiary became indefeasibly vested with an estate. In other words, all contingent interests, and all vested estates subject to condition of defeasance, were not taxable until the remainders became indefeasibly vested.

The question whether interest will run from the death of testator to the indefeasibly vesting of the contingent interest is the subject of judicial consideration under the New York Law of 1885 and 1887. *Re Davis*, 149 N. Y. 539.

215. Deposit to Save Discount and Interest.

In the early administration of the law in Illinois, there existed a practice of making a deposit with the County Treasurer within six months of decedent’s death under an arrangement with such County Treasurer that the five per cent. discount would be allowed depositor and no interest would run on the tax.

This practice has long been abolished in Cook County, as clearly without legal sanction. There are no decisions directly upon the question. However, in a well-reasoned opinion, the Attorney-General of Illinois* has carefully considered the legality of such a practice and held that a deposit so made does not entitle the depositor to the discount nor stop interest.

*W. H. Stead Opinion *post.*

CHAPTER V.

LEGAL REPRESENTATIVE TO COLLECT TAX FROM BENEFICIARY
OR HEIR.

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| 216. Section Four.
217. Administrator—must Withhold
Tax from Share of Benefici-
ary.
218. Executor—Duty to Move for
Appraisement. | 219. Executors and Administrators
—Subrogation.
220. Executors—Liability.
221. Power to Apportion Property
to pay Legacies. |
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216. Section Four. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee, before the paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts, to make an apportionment if the case requires it, of the sum to be paid into his hands by such legatees, and for such

further order relative thereof as the case may require.

217. Administrator—Must Withhold Tax From Share of Beneficiary.

Administrators are charged with the duty of conserving the State's interest in property transferred under the Inheritance Tax Law, by withholding the tax from the beneficiaries' share and paying the same to the proper collector of taxes. *Re Carroll*, 128 N. W. (Iowa) 929.

218. Executor—Duty to Move for Appraisement.

"The duty of applying for appraisement is primarily on the executor. (*Frazer v. People*, 6 Dem. 174.)" Greene's Taxable Transfers, 2nd Ed. 94.

219—Executors and Administrators—Subrogation.

An administrator who pays a tax on realty out of personal property is invested with rights of subrogation. *Hughes v. Golden*, 44 Misc. Rep. (N. Y.) 128.

220. Executors—Liability.

It is the legal duty of administrators and executors to pay the tax out of the shares of the distributees and not out of the estate (unless specially directed by will). The requirement of the statute that the executor or administrator shall make the payment is prescribed to better secure such payment, because the government is unwilling to trust solely to the legatees. *Matter of Gihon*, 169 N. Y. 443.

221. Power to Apportion Property to Pay Legacies.

The executor of a non-resident testator having property both within New York and without the State, may, in the payment of legacies utilize the property in New York and save the same from Inheritance Tax. *Matter of James*, 144 N. Y. 6.

CHAPTER VI.

LEGAL REPRESENTATIVE—DUTY—LIABILITY.

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| 222. Section Five.
223. Executor—Personally Liable.
224. Executor—Liability.
225. Collection of Tax—Executors,
Etc., Must Pay Tax.
226. Executors, Administrators and
Trustees Personally Liable.
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Discharge without Payment
in Probate Proceeding.
234. Subrogation — Covenant of
Warranty in Deed Transfer-
ring Land Subject to Tax. |
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222. Section Five. All executors, administrators and trustees shall be personally liable for the payment of taxes and interest, and where proceedings for collection of taxes assessed be had, said executors, administrators and trustees shall be personally liable for the expenses, costs and fees of collection. They shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as herein-after directed.

223. Executor—Personally Liable.

The question of personal liability of an executor discharged in the Probate Court without payment of tax has arisen under the Illinois Act of 1895 in the County Court of Cook County, the Court holding that the executor was personally liable for all taxes (and interest thereon) accruing on the transfer.

People v. Gould, No. 24150, County Court, Cook County, Illinois.

224. Executor—Liability.

The distribution of an estate before appraisement under the Inheritance Tax Law is no defense to an assessment. *Estate of Hackett*, 14 Misc. Rep. (N. Y.) 282.

225. Collection of Tax—Executors, Etc., Must Pay Tax.

Sections 1 and 9 of the Collateral Inheritance Tax Law of 1885 and 1887 impose, in effect, a penalty on executors and administrators for not complying with an express statutory duty to pay the tax. *Matter of Strang*, 117 App. Div. (N. Y.) 796.

226. Executors, Administrators and Trustees Personally Liable.

Executors, trustees and administrators are presumed like other people, to know the law, and they have no right to permit the property on which the State has a lien to pass out of their possession or control until that lien has been discharged.

The property comes into their possession subject to this lien. It is their duty to call the attention of the public officers to the fact that they have the estate in their possession, and that it is subject to the tax, etc. *Re Strang*, 102 N. Y. S. 1062.

227. Executors and Administrators Liable to Pay Tax.

An executor is liable to pay the transfer tax before he can distribute the personal property in his hands, or to the possession of which he is immediately entitled. *Matter of Zefita*, 167 N. Y. 280-284.

228. Executors Liable to Pay Tax.

It is the executor's duty to pay the tax. *Matter of Embury*, 19 App. Div. (N. Y.) 214-217.

229. Executor's Liability.

"The executor is personally liable for the payment of the tax, and must account therefor on final settlement." Greene's Law of Taxable Transfers, 2nd Ed. 65.

230. Executors—Non-Resident Executor Not Discharged From Liability.

Decedent died in 1895 a resident of Connecticut, the owner of property located within the State of New York. Administration was had in Connecticut, but not in New York, and said administration was closed and the property distributed without the payment of the Inheritance Tax due said State of New York. The Court held that the fact of distribution did not relieve either the executor's duty to move for an assessment of the tax, or to make payment of the tax assessed. *Matter of Hubbard*, 21 Misc. Rep. (N. Y.) 566.

231. Executors—Personally Liable.

The executor is personally liable for the tax and the Court has power to enforce payment. *Re Prout*, 3 N. Y. S. 831; *Re Vanderbilt*, 10 N. Y. S. 239.

232. Executor—When Not Liable.

When an appraisement is had under Section 13 of the Act of 1885 (N. Y.) and the District Attorney and executor are notified the report of the Appraiser is ready and said executor and District Attorney do not appear and the surrogate thereupon enters an order of tax as a taxing officer, no appeal being taken as provided by statute, all parties are barred from reviewing the order. Executors who comply with the surrogate's order of tax and make payment pursuant to that order, are relieved from liability. *Matter of Wolfe*, 137 N. Y. 205.

233. Executor and Administrator—Liability Not Relieved by Discharge Without Payment in Probate Proceeding.

A decree of distribution of a court of probate does not protect the executor from liability for Inheritance Tax. The fact the executor acted in good faith is not material. *Attorney-General v. Rafferty*, 95 N. E. (Mass.) 747.

234. Subrogation—Covenant of Warranty in Deed Transferring Land Subject to Tax.

"A certain Martha Pollock, owning a tract of land (a portion of which was afterwards purchased by the plaintiff), died unmarried, intestate, and without issue, November 13th, 1866, leaving as her heirs at law, brothers and sisters, one of whom was William Pollock (plaintiff's vendee). Upon the death of Martha, her estate vested in William Pollock, and the other heirs, subject to the collateral inheritance tax. November 9th, 1868, said Pollock, by John R. Large, his attorney in fact, sold to James McClain, the plaintiff, the said tract of land, containing 54 acres, in fee, by deed of general warranty in ordinary form, using the words, 'The said party of the first part in consideration of \$30,000,' etc., 'have granted, bargained, sold,' etc., 'and by these presents do grant, bargain, sell,' etc., 'to the said party of the second part, his heirs and assigns,' the said tract. In 1869, William Pollock died, leaving him surviving him as heirs at law Ann M. Power and other defendants in this suit. John R. Large, the other defendant, was duly appointed administrator.

The Collateral Inheritance Tax was ascertained about November 1st, 1884, with twelve per cent. interest from November 13th, 1886, and fixed at \$988.81. This amount, the plaintiff, under protest to save himself from execution and sale of said property, on November 20th, 1884, paid to the party authorized to collect it for the commonwealth. The heirs of William Pollock have received assets from his estate,

real and personal property, far in excess of the amount of said tax paid by plaintiff.

The defendant set up, by way of defense, that plaintiff's title was not under the deed of Pollock, but arose under proceedings in the orphan's court and administrator's deed after his death; but, for reasons appearing in the notes of trial, the defense was declared legally insufficient, and the jury instructed to find a verdict for plaintiff, subject to the opinion of the court as to whether, under the covenants in the deed from Pollock, by his attorney in fact, to plaintiff, the latter had a right to recover in this suit the money paid by him as collateral inheritance tax which was a lien upon the property conveyed by said deed. The plaintiff contends that the words 'grant, bargain, and sell,' in the deed under the act of twenty-eighth of May, 1715, created a covenant against incumbrances, which was broken as soon as made by this lien, and that plaintiff, being compelled to pay it to save his property, has a right to recover it in this suit. Defendants claim that the lien for the tax was not brought about by the act of the vendor; but, being imposed by the law (subsequent) to the vesting of the title in him by descent, plaintiff has no remedy upon the covenant arising out of the words 'grant, bargain, and sell.'

We think the case of *Shaffer v. Greer* (87 Pa. St. 370) covers this. The incumbrance here was a tax which originated with the title of plaintiff's vendor, and was coincident with, or as between him and his vendee, the plaintiff, it was his duty to see it paid. It seems to us that it would be giving the statute too narrow an interpretation to hold that it did not cover such a case as this. It does not appear a forced construction to say that he suffered a charge on the land during his title, for which, as between him and his grantee, he was bound to indemnify him." *Large v. McClain*, 7 Atl. Rep. 101.

CHAPTER VII.

TAX PAYABLE TO COUNTY TREASURER—RECEIPT.

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| 235. Section Six.
236. Probate Court Cannot Discharge Liability of Legal Representative — Must Appeal to Review Appraisement. | 237. Discharge of Probate Court does not Discharge Executor or Administrator from Liability.
238. Probate Court May Demand Voucher Showing Payment. |
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235. Section Six. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the Treasurer of the proper county, and the said Treasurer or Treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the Treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credits in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the Treasurer and a copy thereof certified by him.

236. Probate Court Cannot Discharge Liability of Legal Representative—Must Appeal to Review Appraisement.

No executor or administrator is discharged from liability unless the tax is paid and a receipt procured, as

provided by statute. An objection to the correctness of the appraisement is not reviewable, except on appeal. *Matter of Hackett*, 14 Misc. Rep. (N. Y.) 282; 35 N. Y. S. 1051.

237. Discharge of Probate Court Does Not Discharge Executor or Administrator From Liability.

If the Court of Probate approves a final account and report of distribution, and by order declares discharge of executor or administrator, the order is of no effect in relieving the administrator or executor of liability for payment of Inheritance Tax. *Blanchard v. Williamson*, 70 Ill. 647; *Dunaway v. Campbell*, 59 Ill. App. 665.

238. Probate Court May Demand Voucher Showing Payment.

The surrogate has power to compel the executor or administrator to pay the tax and may demand receipt showing payment. *Re Jones*, 5 Demarest's Rep. 30.

The County Treasurer is the officer authorized by statute to collect and receipt for Inheritance Taxes and interest. See "Forms" for Inheritance Tax Receipts.

CHAPTER VIII.

LEGAL REPRESENTATIVE TO MAKE KNOWN PROPERTY SUBJECT TO TAX.

239. Section Seven. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the Treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

CHAPTER IX.

REFUND OF TAX.

240. Section Eight. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State or County Treasurer, or by the County Treasurer if it has been so paid.

(See Section 10 for comment on power of a State or County officer to refund tax.)

CHAPTER X.

TRANSFER OF PROPERTY BY CORPORATION, BANK, DEPOSIT COMPANY, INSTITUTION OR PERSON.

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| <p>241. Section Nine.</p> <p>242. Is Constitutional.</p> <p>243. Litigation Involving Section Nine.</p> <p>244. Possession and Control of safe Deposit Company.</p> <p>245. Possession and Control of Safe Deposit Company—Must Deliver the Contents to Owner —State is Part Owner.</p> <p>246. State's Interest in Property Contained in a Safety Deposit Box.</p> <p>247. Notice—State Must be Advised of the Contents of the Box. State a Part Owner.</p> <p>248. Depository and Safe Deposit Company not Deprived of Constitutional Right by Requirement of Notice.</p> <p>249. Depository has Remedy.</p> <p>250. State has Interest equal in degree to beneficiary.</p> <p>251. Interested Parties are Entitled to Knowledge of Contents of Box.</p> <p>252. Joint Lessees—Co-Partnership Property—Constitutional.</p> | <p>253. State's Right is Fixed at the Time of the Death of Lessee.</p> <p>254. Does not Impair Obligation of Charter of Safe Deposit Company.</p> <p>255. No Delivery until Tax is Paid.</p> <p>256. Safe Deposit Company not Deprived of Property and Liberty Without due Process of Law.</p> <p>257. Depository Company as Tax Gatherer.</p> <p>258. Unreasonable Searches and Seizures.</p> <p>259. Property of safe Deposit Company not Subject to Public Use without Just Compensation.</p> <p>260. Corporations Liable for Transfer of Stock.</p> <p>261. Notice — Bank, Custodian of Money or Securities—Must give the Notice.</p> <p>262. Will and Codicils not Property within Section Nine.</p> <p>263. Transfer — what Constitutes within Meaning of Section Nine.</p> |
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241. Section Nine. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the Treasurer of the proper county on the transfer thereof. No Safe Deposit Company, Trust Company, corporation, bank, or other institution, person or persons, having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-

resident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the Safe Deposit Company, Trust Company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such Safe Deposit Company, Trust Company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the Safe Deposit Company, Trust Company, corporation, bank, or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the Safe Deposit Company, Trust Company, corporation, bank, or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General

consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said Safe Deposit Company, Trust Company, corporation, bank, or other institution, person or persons, liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the Safe Deposit Company, Trust Company, corporation, bank, or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars, and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction.

242. Is Constitutional.

Section 9 of the Inheritance Tax Law of 1909 is a valid and constitutional enactment. *National Safe Deposit Co. v. Stead*, *250 Ill. 584-612.

243. Litigation Involving Section Nine.

The National Safe Deposit Company of Chicago organized under the laws of Illinois for the purposes, among others,

“of providing a suitable building or buildings with vaults and safes, with a special regard to protection

*Taken to U. S. Supreme Court on Writ of Error.

against loss by fire, robbery or otherwise, and to carry on the business of safety deposit and storage" filed a bill in chancery in the Circuit Court of Cook County to restrain the Attorney-General, State Treasurer, and Inheritance Tax Attorney from enforcing Section 9 against said company and all other corporations, firms, and individuals similarly situated and engaged in renting safes and deposit boxes for hire, on the ground said act was unconstitutional and void. A general demurrer was sustained and the bill dismissed for want of equity and an appeal taken to the Supreme Court.

The Court's decision is digested as follows:

244. Possession and Control of Safe Deposit Company.

A corporation organized for the purpose of providing a suitable building with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise, and to carry on the business of safety deposit and storage, having a contract or contracts with individual or joint box holders, sustains the relation of bailee to such box holders or box renters, and is in control and possession of property in the box, notwithstanding the fact that the character or description of the property in the boxes is unknown to the depositary.

245. Possession and Control of Safe Deposit Company—Must Deliver the Contents to Owner—State is Part Owner.

When the box stands in the individual or joint name of the decedent, it is the duty of the Safety Deposit Company to deliver the contents of said box to those persons, only, to whom the property belongs. The State, by rea-

son of the Inheritance Tax Law, may be a part owner of such property.

246. State's Interest in Property Contained in a Safety Deposit Box.

"It is clear that the State has an interest in every estate that is subject to the payment of an Inheritance Tax, and in all such proceedings the Attorney-General or some other designated officer is the representative of the State."

247. Notice—State Must be Advised of the Contents of the Box. State a Part Owner.

When a lessee of the Safety Deposit Company dies, leaving property in a safety deposit box in the possession, or control of, the Safety Deposit Company or a depositary, the State, by its proper representative, has the right to be advised whether or not it shall ultimately be established that it has an interest in such property, and of the time and place the property will be surrendered and delivered by the Safe Deposit Company or depositary to the personal representative, heir or devisee of the decedent, for the purpose of being informed as to whether there is an Inheritance Tax on the succession to the property in the box.

"If such were not held to be the law, all moneys, securities or other valuables held by appellant, in its safety deposit boxes or safes for its lessees, upon the death of a lessee might be transferred to parties other than the State or its representatives and immediately removed to a foreign State or country, or concealed or otherwise disposed of, and the true owner of the property in part—that is, the State—be deprived of all right to enjoy the use and possession of such property. It therefore legitimately follows, we think, that the provisions of Section 9, which require

the representative of the State to have notice of the time when the property held * * * is to be surrendered and removed from the custody of the Safe Deposit Company and delivered to the personal representatives, heir or devisee of the decedent, are not an unreasonable measure to protect the State from loss of property in which it has a vested right."

248. Depository and Safe Deposit Company not Deprived of Constitutional Right by Requirement of Notice.

A depositary is not deprived of any constitutional right by a requirement that it shall give notice to the State authorities when and where the transfer of property under its possession or control is to be transferred or delivered.

"Nor can we say that the appellant (Safe Deposit Company) will be deprived of any of its constitutional rights by making it liable for the amount of the Inheritance Tax in case it violates the clear mandate of the law, and parts with the possession of such property without giving notice to the State of such removal and delivery, or in being penalized for so doing."

249. Depository Has Remedy.

"It is obvious, should doubts arise as to whether an Inheritance Tax is due on the succession of property held by a safety deposit company whose former owner is dead, or as to the amount of such tax, the courts will always be open, upon the application of the safety deposit company, the State or those interested, to adjudicate upon such questions as may arise and solve the doubt, so that the appellant's expressed fear that it might be wrongfully required to pay an inheritance tax upon property which it had supposedly properly surrendered and delivered, or be penalized for the infraction of the statute and mulcted in costs, is, we think, a groundless fear."

250. State Has Interest Equal to Beneficiary.

The provisions of Section 9 requiring the Safe Deposit Company in possession or control of property standing in the name of the deceased lessee or lessees, to give notices to the State of the time, when and where it will transfer such property, and penalizing the depositary for the failure to comply with the section is a valid exercise of legislative power.

"The appellant has no more right under the Constitution (either State or National) to ignore the property rights of the State, and to surrender and to deliver the property * * * to the heir or devisee * * * that it would have to deliver the same to the State in exclusion of the rights of the heir."

251. Interested Parties Are Entitled to Knowledge of Contents of Box.

All parties in interest for whom the appellant holds property are entitled to be informed of the condition and amount of such property so found in safe deposit boxes or safes, before the depositary parts with the possession thereof.

"This would be the law which would govern any other bailee under like circumstances, if the statute had not been enacted, and we think no valid reason is or can be assigned why such should not be held to be the law in view of said statute governing safety deposit companies."

252. Joint Lessees—Co-Partnership Property—Constitutional.

The provisions of Section 9 concerning property standing in the joint name or names of one or more persons, governs joint lessees of a box, and property standing in the name of a co-partnership.

"There is no constitutional objection to the en-

forcement of the statute as to property owned jointly by a deceased lessee and another and deposited in a safety deposit box or safe, where the property of the several lessees has not been commingled by the acts of the parties but has been kept separate.

If it be borne in mind that the co-partnership by the death of the co-partner is dissolved, and that while the assets may be lawfully retained by the surviving member or surviving members of the co-partnership, they ultimately must account to the personal representative of the deceased partner for his share, and that the inheritance tax will only be assessed upon the succession to what may remain after the partnership debts are paid, it must be held that the statute applies to the co-partnership lease, and to co-partnership assets. We can see no objection to the personal representative of the deceased partner and all other persons who have or will have an interest in his estate (which would include the State), being informed as to the amount, character and value of the co-partnership, safety deposit box or safe, at the time of the dissolution of the partnership by death of a partner."

253. State's Right is Fixed at the Time of the Death of Lessee.

"The State has a vested financial right in the estate of every decedent in this State, which is subject to the payment of an Inheritance Tax, and that right is equal in degree to that of the personal representative, heir or devisee of the decedent, and it vests at the same moment of time that the interest of the personal representative, heir or devisee vests."

254. Does not Impair Obligation of Charter of Safe Deposit Company.

Where a charter of a safe deposit company provides for the business of erecting and maintaining a suitable building with vaults and safes for the protection of prop-

erty against fire, robbery and otherwise, the provisions of Section 9 in no way effect such rights.

"A law which, in fact, only requires that the appellant shall not without notice to the State, deliver the property which it has received into its vaults where the owner or part owner of such property has died since its receipt by the appellant, and, if it is subject to an Inheritance Tax, not deliver the same, without consent of the State, until the tax is paid, (cannot) rightfully be said to infringe upon the charter rights of the appellant."

255. No Delivery until Tax is Paid.

"In short, that Section 9 provides, first, for the determination of the question, Is the property subject to an Inheritance Tax? and if it is, that it must be paid before the appellant can rightfully part with the possession of the property."

256. Safe Deposit Company not Deprived of Property and Liberty without Due Process of Law.

"Having heretofore reached the conclusion that a safety deposit company is in possession and control of the securities and other valuables delivered to it by its lessees, and that the relation of bailee and bailor exists between the safety deposit company and its lessee, and that upon the contingency of the death of a lessee who is an owner in whole or in part, of property in the possession of the safety deposit company, the safety deposit company may rightfully hold such deposit, and must hold it, until it can deliver it to the true owner, and that the State is a part owner of the deposit in case it is subject to the payment of an Inheritance Tax, we think by the terms of Section 9, the appellant's right of contract is not infringed upon and that it is not deprived of liberty, property or the due protection of the law."

257. Depositary Company as Tax Gatherer.

The objection to Section 9 that appellant is made a

trustee and tax gatherer without its consent is not tenable.

"The appellant is not a trustee in the ordinary sense, but a bailee, and the fact, if it were a fact, that it is used, in part, as a tax-assessing and tax-collecting officer would not invalidate the statute. Numerous statutes have been passed by the Legislatures of this and other States which require banks, trustees, executors, administrators and agents to return for taxation property in their possession, and such statutes frequently provide that if the banks, trustees, executors, administrators and agents holding such property surrender the same without the tax thereon being paid, they shall be liable for the tax (*Walton v. Westwood*, 73 Ill. 125; *Ottawa Glass Co. v. McCaleb*, 81 id. 556; *Lockwood v. Johnson*, 106 id. 334; *Warren v. Cook*, 116 id. 199; *People's Loan & Homestead Ass'n v. Keith*, 153 id. 609; *Scott v. People*, 210 id. 594.) In many instances the corporations have been made collecting officers by being required to deduct the taxes from the stockholders' interests and pay them over to the State. (*Haight v. Pittsburgh, Ft. Wayne & Chicago R. R. Co.*, 73 U. S. 15; *United States v. Baltimore & Ohio R. R. Co.*, 84 id. 322; *National Bank v. Commonwealth*, 76 id. 353; *Minot v. Philadelphia W. & B. R. R. Co.*, 52 Pa. 140.) In *Citizens' National Bank v. Kentucky*, 217 U. S. 445, the revenue law of Kentucky, which charged the banks with the duty of collecting the taxes or shares, was sustained. Mr. Cooley, in his work on taxation (Vol. 2, 3rd., p. 832), in discussing this subject says: 'For the most part, the taxes levied by the State are collected of the persons taxed or enforced against the property in respect to which they are imposed. In a few cases, however, in which such a course could not work injustice, the State may reach the party taxed by indirection, and collect, in the first instance, from some one else, who in turn will become collector from the person on which the tax is really imposed. The reason for this is that in such cases it is more convenient to the State and perhaps makes more certain the collection and it could be resorted

to only when the case is such that injustice could result to no one. A case of the kind is where a tax is imposed on the dividends or other receipts of shareholders from the profits of corporations, or upon their shares, or upon the interest paid by indebted corporations, and where the corporation is required to make the payment, which it would then deduct from the payment to be made to shareholders or to the holders of the evidences of indebtedness. There is no doubt of the right to do this, except as payments to be made to non-residents, nor even as to them if the statute under which their interests were acquired provided for the levying and collecting of taxes in that manner. Other instances are, where a tax is required under a lease, the amount of which tax may be deducted from the rent, or where the person having custody of distilled spirits is obliged to pay the tax thereon, he being given a lien on them for what he so pays.' We conclude the appellant is not deprived of its liberty, property or due protection of the law or wrongfully made a trustee or tax-gathering agent against its will."

258. Unreasonable Searches and Seizures.

The provisions of Section 9 do not effect an unreasonable search and seizure of property in safety deposit boxes or in the hands of a depositary.

259. Property of Safe Deposit Company not Subject to Public Use without Just Compensation.

Section 9 effects no infringement upon the constitutional provision, either State or National, which forbids property to be taken for public use without just compensation.

"In the very nature of things, in the settlement of estates of deceased persons, there must be some delay in determining who is entitled to receive the estate, and as we have heretofore held, when the appellant leases its safety deposit boxes and safes, it

and its lessees must necessarily have contracted with reference to the inevitable fact that some of its lessees will die pending the continuation of their leases. This being true, we think it manifestly follows that appellant's leases are made and the rent therefor is fixed upon the contingency that in case of the death of a lessee pending the lease, there will be some delay in the delivery of the property of the lessee to the true owner."

260. Corporations Liable for Transfer of Stock.

Corporations which transfer stock standing in the name of a non-resident decedent do so at their peril, until tax is paid. *Matter of Romaine*, 127 N. Y. 80.

261. Notice—Bank, Custodian of Money or Securities—Must Give the Notice.

"Where a bank refused to turn over the account of a decedent to his executor on the ground that said executor had not given the required notice of such withdrawal to the State comptroller, *Held*, that under Section 228, Chapter 908, Laws 1896 (N. Y.) and as amended by L. 1902, Chapter 101, the obligation to give notice to the State comptroller of the delivery or transfer of deposits, etc., rests upon the bank, not the executor; and that the failure of the bank to perform its duty in this respect imposed by the statute cannot affect the right of the executor to recover." Fallows on Coll. Inh. & Transfer Tax Law of N. Y. 366, citing *Rathbone v. Bank of Metropolis*, N. Y. Law Journal, June 15th, 1904.

262. Will and Codicils not Property within Section Nine.

The last will and testament and codicils of decedent are not included within the meaning of "securities, deposits or other assets," and therefore are not comprehended.

hended by Section 9 of the Inheritance Tax Law (Illinois). No notice need be served prior to their delivery to the person, corporation or Court entitled to the possession thereof, nor is a consent necessary to permit its delivery. Attorney-General's (Illinois) Opinions, 1910, page 935.

263. Transfer—What Constitutes within Meaning of Section Nine.

If a deposit company or other institution or person delivers to a joint box holder, user, surviving partner or other person a box or property for examination, within or without the vault or office of the person or company, and an inspection or examination is made without a representative of the deposit or other company, institution or person being present during the entire time, no notice having been given to the Attorney-General and State Treasurer of the time and place of such examination, the company has made a transfer prohibited by statute and is liable for a penalty of \$1,000.00 and the tax and interest on the decedent's property.

CHAPTER XI.

REFUND OF TAX.

264. Section Ten.	Claims Awarded	Claim for
265. County Treasurer—Cannot Re-fund.	Refund or Erroneous Payment.	
266. State Treasurer—Cannot Re-fund without Appropriation.		269. State Auditor.
267. Refund by State—Payment must have been under Duress or Compulsion.		270. Interest—Cannot be Recovered on Refund.
268. Refunds — When Court of		271. Interest—Cannot be Recovered against the State of Iowa on Refunds.
		272. State's Duty—Refunds.

264. Section Ten. When any amount of said tax shall have been paid erroneously to the state treasury, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid: Provided, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

265. County Treasurer—Cannot Refund.

People v. Griffith, 245 Ill. 532.

The Supreme Court in *People v. Griffith*, 245 Ill. 532, in reversing an order of the County Court ordering the County Treasurer to refund the tax, held:

“We don’t think it was the intention of said Section 10 that the County Treasurer should be authorized thereunder to repay taxes erroneously paid to him. Clearly, under that section, it was only intended that the State Treasurer, upon proper proof, should refund such amounts. The provision of the order of the County Court requiring the County

Treasurer to refund the money in question was not in accordance with this law. The order in that respect should have left appellees free to pursue such remedies as they might deem proper and effective for the recovery of the money erroneously paid to the County Treasurer and by him, as we must assume, paid to the State Treasurer."

266. State Treasurer—Cannot Refund without Appropriation.

If, according to *People v. Griffith, supra*, the State Treasurer has the power to refund erroneous payments, yet he cannot pay out money unless an appropriation is made to him by the Legislature providing for such repayments. (Attorney-General's Opinion—*post*.)

The proper method for securing refund of erroneous payment of Inheritance Tax where the State Treasurer has no appropriation therefor, is a suit in the Court of Claims, pursuant to the law as therein provided.

267. Refund by State—Payment Must Have Been under Duress or Compulsion.

It is a well-established principle of law in Illinois that there can be no recovery back of taxes erroneously or illegally paid, unless the same were paid under actual duress or compulsion. (*Yates v. Insurance Co.*, 200 Ill. 202, and cases cited.) *Griffith, Ex., v. State of Illinois*, Court of Claims, decision 1910.*

268. Refunds—When Court of Claims Awarded Claim for Refund of Erroneous Payment.

In a suit against the State, brought in the Court of Claims, Jennie Sanford Griffith, executrix of the estate of Merritt E. Sanford, deceased, was allowed the sum of

*Opinion of court given in full, post pages 418-419.

\$497.09, being the amount claimed by her as an erroneous payment of Inheritance Taxes to the County Treasurer of Cook County pursuant to an order of tax of the County Judge of Cook County, in an appraisement of the Sanford estate under the Law of 1895. Executrix appealed from said order of tax to the County Court, where the order of the County Judge was reversed, and the County Treasurer was directed to refund \$497.09 as an erroneous payment. The County Treasurer refused payment and on the Attorney-General's appeal to the Supreme Court the refusal of the County Treasurer was sustained and the order of the County Court reversed. (See *People v. Griffith*, 245 Ill. 532.) The Supreme Court held that even though the payment was erroneous, Section 10 does not provide for the County Treasurer to make the refund, but that the State Treasurer has the power to make repayment.

Executrix thereupon filed her suit in the Court of Claims and same was allowed. *Griffith, Ex., v. State of Illinois*, Court of Claims (*supra*).

269. State Auditor.

Cannot draw warrant on State Treasurer for amount of an erroneous payment unless appropriation has been made to cover repayments. Attorney-General's Opinions, *post*.

270. Interest—Cannot be Recovered on Refund.

Board of Highway Com'rs, Bloomington Tp., v. City of Bloomington, 97 N. E. (Ill.) 280.

271. Interest—Cannot be Recovered against the State of Iowa on Refunds.

The Inheritance Tax provision for the refunding of taxes where an overpayment was made by the tax payer,

does not justify the State in allowing interest upon said overpayment. The statute creates no liability against the State of Iowa for the use of the money. Upon a proper showing it is made the duty of certain officers to order and issue warrant upon the Treasurer of the State to refund such taxes. No authority is conferred upon any public officer to order or issue a warrant for any amount as interest. *Wieting v. Morrow*, 132 N. W. 193.

272. State's Duty—Refunds.

It should be the duty and policy of the State to refund money erroneously taken in taxation with the same promptitude that it is paid, when the citizen establishes his right to repayment by those rules of procedure and law necessary to develop and record the facts upon which the claim is based, thereby giving protection to the government from fraud.

CHAPTER XII.

APPRAISERS AND APPRAISEMENT.

273. Section Eleven.
274. Tax Proceeding is One at Law.
275. County Judge Appoints Appraiser — Appeal lies to County Court—The State is an Interested Party and is Represented by the Attorney General—Appeal Lies to the Supreme Court.
276. County Judge must Appoint Appraiser—Mandamus may be Invoked.
277. County Judge—Has Original Jurisdiction to fix the Tax.
278. County Judge is Assessing and Taxing Officer.
279. County Judge—Is Made a Taxing Officer—Fixes tax “As of Course.” Is a Special System of Taxation.
280. County Judge—Order of Tax must be Entered “Forthwith.” Objection to order cannot then be made.
281. County Court—Has Power to Determine all Questions Relating to Taxation.
282. County Court—Construction of Will Conclusive only as to Taxation.
283. When State not Bound by Construction of Will.
284. County Judge has Original Jurisdiction to Determine Tax.
285. Appraiser.
286. Commission to Take Evidence.
287. May Compel Witness to Testify.
288. Not Concluded from Taxing Property Escaping Taxation Because of Executor’s Claim it was not Part of Estate.
289. Order of Tax—is Final as to Property Involved.
290. Order of Tax is Final when notAppealed from.
291. Order of Tax Cannot be Modified except by Appeal—Excessive Valuation not Reviewable on Petition.
292. Order of Tax is Final.
293. Order of Tax is Final and Reappraisement cannot be made.
294. Order of Tax is Final and can Only be Reviewed by Appeal.
295. Cannot Amend Order Assessing Tax.
296. Can Amend or Correct Order without Appeal.
297. Cannot Reverse Order of Tax on Motion.
298. Order of Tax is a Decree or Order of Court.
299. Subrogate Acts Judicially in Entering Order of Tax.
300. Notice of Tax—Presumption of Service by County Judge.
301. County Judge—Must Enter Order According to Direction of Court of Review—Appeal Cannot be Taken in Piece-meal.
302. Appraisement and Appraiser.
303. Appraiser Fees.
304. Expenses and Disbursements.
305. Legal Counsel for Appraiser.
306. Service is Had by Notice.
307. Appraisement must Proceed under Section Eleven of the Illinois Law.
308. Inventory—State has Right to Compel Filing.
309. Appraisement.
310. Practice and Procedure — Which Law Governs.
311. Contingent Estates—All Property Appraisable—Tax Postponed.
312. Residence—Appraiser May Determine.
313. Appraiser—Surrogate May Appoint before Claims are Ascertained.
314. Appraiser Cannot Decide Question of Law.
315. Appraiser—May Hear Evidence on Deductions.

316. Evidence—Presumption in Absence of Proof of Jurisdictional Facts.
317. Evidence—Proof must Clearly Identify Property Alleged to have been Transferred by Death.
318. Evidence—Presumption When Deposit in Name of Husband and Wife.
319. Evidence—Must Show Income Reversed.
320. Joint Stock Association—Real Estate to be Considered in Valuation.
321. Appraiser—Report May be Returned for Additional Proof.
322. Appraisement — Second Appraisal not Permissible to Increase Value of Assets.
323. Increase or Decrease in Value after Death not Material.
324. Appraisement—Title of Case Must be in Name of Donor of Power.
325. Appraisement—Property not Included in Appraisement can be subsequently appraised.
326. Appraiser—if in Doubt Reports Property Taxable.
327. Appraiser—Duty Ended with Report.
328. Misappropriation of Property by Executor does not Relieve from Taxation as of Death of Decedent.
329. Market Value—Fixed as of date of Death.
330. Fair Market Value—Listed Stocks, etc.
331. Market Value—Public Sales of Securities.
332. Market Value — Synonymous with True Value.
333. Market Value — Fixed at Transfer or Whenever Ascertainable.
334. When no Market Value—Actual Value is Taken.
335. Market Value—Isolated Record Sales do not Determine.
336. Market Value—Where Evidence of sales is not Contradicted or rebutted, such Evidence must Prevail.
337. Market Value—Good Will can be Taken into Account in Determining Market Value.
338. Range of Market.
339. Deductions—in General.
340. Amount of Administration Fees Allowed.
341. Attorney's Fees and Executor's Commissions for Administration and Defending Will—Claims of Non-residents.
342. Deductions must be Presented at Appraisement—not afterward.
343. Allowance of Decedent's Debts.
344. Commissions of Administrator.
345. Commissions of Administrator May be Estimated.
346. Expenses of Administration.
347. Real Estate Taxes—Deductible.
348. General Revenue Taxes Charged to Real Estate should be deducted.
349. General Revenue Tax—When not Deductible in an appraisal.
350. Trustees—Commissions not Deductible.
351. Deductions — Mortgages not Deductible from Personality.
352. Inheritance Tax—Not Deductible.
353. Deductions—Inheritance Tax.
354. Burial Lot—When Cost is Deductible.
355. Deductions—Second Appraisement—Assets Increased by Defeating Claims against Estate.
356. Doubtful Deductions rejected.
357. Deduction—Note in Litigation.
358. Deductions—Legal Services for Construction of Will.
359. Deductions—Expenses of Litigation between Distributors not Deductible.
360. Ante-nuptial Contract does not Create an Indebtedness of the Estate.
361. Debts of Non-resident Estate —What Deductible from New York Assets.
362. Deductions—Pro Rates in Non-resident Estates.

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| 363. Debts—When Chargeable to Assets at Domicile of Non-resident Deductions should be Proportioned.
364. Apportionment of debts between Exempt and Non-exempt Property.
365. When one Co-tenant Furnishes money for Improvements.
366. Appeal—County Judge to County Court.
367. County Court to Supreme Court.
368. Practice in Cook County, Illinois. | 369. Appeal — DeNovo — Common Law Proceeding—Bill of Exceptions.
370. Notice of Appeal—Attorney for State Comptroller cannot Waive and Confer Jurisdiction.
371. Appeal.
372. Appeal—is Necessary to Review Correctness of Assessment—Deductions must be Presented to Appraiser.
373. Executor may Appeal.
374. United States Supreme Court — When Construction of State Court will be Followed. |
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273. Section Eleven. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the County Judge, on application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, to all persons known to have or claim an interest in such property, and to such persons as the County Judge may, by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the County Judge, to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, to said County Judge, with the depositions of the witnesses examined and such other facts in relation thereto and to said matters as said County Judge may, by order require to be filed in the office of the Clerk of said County Court, and from this

report the said County Judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such appraisement or assessment on paying or giving security satisfactory to the County Judge to pay all costs, together with whatever taxes shall be fixed by said court. The said appraiser shall be paid by the County Treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisement, as by law provided, on the certificate of the County Judge, such compensation as such Judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him.

274. Tax Proceeding is One at Law.

The proceeding for the assessment of an Inheritance Tax "is a special statutory one." *People v. Mills*, 247 Ill. 621.

The tax proceeding is not one in equity but is governed by the rules in law actions. *People v. Sholem*, 238 Ill. 203.

275. County Judge Appoints Appraiser—Appeal Lies to County Court—The State is an Interested Party and is Represented by the Attorney-General—Appeal Lies to the Supreme Court.

"Jacob Sholem died testate in Paris, Illinois, March 1st, 1907, leaving certain property. August 19th, 1907, on petition of the Attorney General, the County Judge of Edgar County appointed an Appraiser to appraise the estate of said deceased under the Inheritance Tax Law. After a brief hearing the Appraiser declared the case closed and refused to take any further evidence. The Appraiser thereupon made his report and filed it with the Clerk of the County Court on April 10th, 1908. Thereafter, on April 24th, the County Judge entered an order approving the report of the Appraiser and fixing the cash value of estates given to the beneficiaries and taxes on the same, as provided by Section 11 of said Inheritance Tax Law. (Hurd's Stat. 1908, p. 1822.) From this order the Attorney General prayed and was allowed an appeal to the County Court of Edgar County. This appeal was perfected, and thereafter appellees made a motion in the County Court to dismiss the appeal, for the reason that the State had no statutory right to appeal from the County Judge to the County Court under said Inheritance Tax Law. This motion was allowed and the appeal dismissed, whereupon the Attorney General prayed and was allowed an appeal to this Court.

The appellees contended that the County Court improperly made an order, based on memoranda kept on the docket of the County Judge, to file *nunc pro tunc* the Appraiser's report. The question cannot be considered by us, as no cross-errors have been assigned by the appellees. *Kantzler v. Bensinger*, 214 Ill. 589; *Provart v. Harris*, 150 Id. 40; *Expanded Metal Fireproofing Co. v. Boyce*, 233 Id. 284.

Appellees further contend that the question of the right of the State to appeal from the order of the County Judge to the County Court does not directly involve revenue, and therefore this appeal

should have been to the Appellate Court and not to the Supreme Court. By Sections 21½ and 11½, which were made a part of the Inheritance Tax Law by amendment in 1901, it is plain that Inheritance Tax cases are appealed directly to the Supreme Court from the County Court, regardless of whether revenue is directly involved. The universal practice, as well before as since these amendments were passed, has been to appeal such matters directly from the County Court to the Supreme Court. *Kochersperger v. Drake*, 167 Ill. 122; *Ayers v. Chicago Title & Trust Co.*, 187 id. 42; *Billings v. People*, 189 id. 472; *Walker v. People*, 192 id. 106; *Provident Hospital & Training School v. People*, 198 id. 495; *People v. McCormick*, 208 id. 437; *People v. Moir estate*, 207 id. 180; *Connell v. Crosby*, 210 id. 380; *Rosenthal v. People*, 211 id. 306; *Merrifield Estate v. People*, 212 id. 400; *In re Estate of Speed*, 216 id. 23; *People v. Kelley*, 218 id. 509; *In re Estate of Kingman*, 220 id. 563; *In re Estate of Benton*, 234 id. 366.

The further and chief contention is, that the State has no right of appeal from the order of the County Judge to the County Court. Said Section 11 of the Inheritance Tax Law, after providing for the appointment of the Appraiser and as to the method of finding and reporting the value of the estate, continues: 'From this report the said County Judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the County Court of the proper County within sixty days after the making and filing of such appraisement or assessment on paying or giving security satisfactory to the County Judge to pay all costs, together with whatever taxes shall be fixed by said Court.' This seems to have been the only provision touching appeals in the law as it stood when first enacted in 1895.

The further contention is made that the statute

did not intend to give the State the right of appeal from the action of the County Judge, because said Section 11 provides that such appeals shall be allowed 'on paying or giving security satisfactory to the County Judge, etc.,' and that the State is not required, in appealing, to give bond. We do not think the conclusion contended for follows. Section 192 of the Revenue Law (Hurd's Stat. 1908, p. 1782) which provides for appeals from the judgment of the County Court in tax matters, provides that 'the party praying an appeal' shall execute a bond to The People of the State of Illinois, with two or more sureties, to be approved by the Court.' The practice in this State since the enactment of this Section has been uniform to permit an appeal by the State and without requiring a bond. By a fair construction of Section 11, taken in connection with the entire Inheritance Tax Law, it manifestly was intended to give to the People the right to appeal from the order of the County Judge appraising or assessing the tax, to the County Court. This is in accord with the practice and settled rules of law. Any other conclusion would be unnatural and unreasonable and tend to defeat justice.

The further contention of appellees that the order of appeal in question was from the finding of the County Judge approving the Appraiser's report, when it should have been from the finding of the County Judge assessing and fixing the cash value of the estate, cannot be upheld. The County Judge, by the same order, approved both the Appraiser's report and fixed the cash value and the appeal was plainly from the entire order." *People v. Sholem*, 238 Ill. 203.

276. County Judge Must Appoint Appraiser— Mandamus May be Invoked.

In an appeal from an order of the special term, denying application for a peremptory writ of mandamus, requiring the surrogate of Kings County, (N. Y.) to appoint an Appraiser in a transfer tax proceeding on mo-

tion of the comptroller, under Laws of 1896, ch. 908, Sec. 230, as amd. by Laws 1904, ch. 758, which provides:

"The surrogate either upon his own motion or upon the application of any interested party, including the comptroller of the State of New York, shall, by order, direct the County Treasurer, in the county in which the office of the Appraiser is not salaried, and in any other county the person or one of such persons so designated as Appraisers, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article." (Tax Law Article 10 as amended.)

The Court held:

"At the threshold of this inquiry it is important to determine whether this provision is mandatory. It is well settled that where a statute clothes a public officer with power to do an act which concerns the public interests, the execution of the power may be insisted upon as a duty even though the language of the statute be permissive only. The language of the statute under consideration is imperative. The portion of the statute quoted *supra* was taken from Section 11 of Chapter 399 of the Laws of 1892, but with a significant omission. As the statute originally was it provided: 'The surrogate, upon the application of any interested party * * * shall, as often and whenever occasion may require, appoint a competent person as Appraiser, * * *.' The Court of Appeals said, in *Matter of Westurn*, (152 N. Y. 93), that this statute left it to the sound discretion of the surrogate to determine when the power should be exercised; and the present case furnishes a concrete illustration of the reason, founded upon experience, that doubtless moved the Legislature to eliminate the words affording ground for this construction. This statute provides the machinery for the assessment and collection of the tax, and makes the surrogate of each county a part of it. He is required in the first instance to appoint an Appraiser (Tax Law, paragraph 230, as amd. *supra*); upon the report of the Appraiser and

any other proof relating to the estate which may be before him, he is required forthwith as of course to determine the cash value of the estate and the amount of tax to which it is liable. (See Tax Law, Par. 232, as amd. by Laws of 1901, Chap. 173.) It is plain that up to this point he acts as an assessing officer merely, of course, judicially the same as every assessor acts. From the initial order imposing the tax an appeal lies in the first instance to the surrogate, who thereupon is required to review his own acts as such assessing officer. (See Tax Law, Par. 232, as amd. *supra*.) The initial step in the proceeding in the appointment of an Appraiser, and the surrogate is required to make such appointment either on his own motion, or upon the application of any interested party, including the State Comptroller; he must act upon his own motion when he learns of the facts affording reason to believe that such proceeding ought to be instituted, upon the application of an interested party when a proper application is made. The reason for making the surrogate the assessing officer and requiring him to act upon his own motion is plain; no other officer in the State has the same opportunity to learn when a transfer tax ought to be imposed, as all resident estates and nonresident estates in which it is necessary to apply for ancillary letters become of record in his office; and although it was said in *Matter of O'Donohue* (44 App. Div. (N. Y.) 186) that 'the jurisdiction of the surrogate to appoint an Appraiser is one that may be exercised with or without a petition and of his own motion, whenever in the sound exercise of his discretion he deems it proper to do so' (the 'exercise of his discretion' evidently referring to action upon his own motion), I think the duty to act in either case is imperative. Of course, before acting on his own motion, he must determine whether the facts within his official knowledge are such as to require action, and before acting upon the application of an interested party he must determine whether a proper application has been made, but his duty to act is just as imperative in either case as is the duty of local assessors to obey the command of the

statute respecting the performance of their duty, and there is no more reason for saying that he has a discretion in the matter than there is for saying that any officer charged with the performance of a public duty has a discretion whether he will discharge such duty.

Was a proper application made? The application was made upon a verified petition which set forth facts upon which the jurisdiction of the surrogate to act depended. To be sure the allegations are upon information and belief, but this is good pleading and is expressly authorized by the Code of Civil Procedure, whether in an action or in a proceeding in Surrogate's Court, and surely more cannot be required respecting the petition for the institution of this proceeding than is required to institute proceedings in the Surrogate's Court. The petition is made by the officer charged by law with the duty of collecting the tax; he cannot know of his own knowledge as to the taxability of these estates, and the very purpose of these proceedings, as the law plainly contemplates, is to ascertain the fact. From the affidavit of the learned surrogate submitted upon this motion, it appears that he is of opinion that oppression to estates may result, unless the State Comptroller is required to establish, in advance, the facts to ascertain which the proceeding is required to be instituted. The fact that some other officer may not understand his duty furnishes no reason for disregarding the statute. But the proceeding need involve no expense to the estate. The Appraiser merely ascertains the facts and reports them with the evidence to the surrogate, and the statute guards against the unlawful imposition of a tax, and gives the estate full and complete protection. Those who desire to evade paying what the law imposes in return for the protection of their persons and property afforded by the State may call the oppression. The danger is not the one feared by the learned surrogate, but that estates legally taxable will escape taxation; respecting resident estates, that, owing to delay, the estate may be wasted or distributed without application to the surrogate, or that it may be

come difficult to ascertain the facts and enforce payment of the tax; respecting nonresident estates, that property subject to tax may be removed from the State without the payment of the tax, except as the transfer of securities of decedents without the payment of the tax may be prevented by another provision of the statute."

The question was raised in this proceeding whether mandamus was the proper remedy. The Court held, that mandamus was the proper remedy. *Kelsey v. Church*, 112 App. Div. (N. Y.) 408.

277. County Judge—Has Original Jurisdiction to Fix the Tax.

"Section 11 of the original act provides the County Judge shall appoint a competent person an Appraiser who shall make report of the value of the property to the County Judge, from which report, he (the County Judge), shall fix the cash value of all estates, and shall give notice by mail to all parties interested." *Provident Hospital v. People*, 198 Ill. 495.

278. County Judge is Assessing and Taxing Officer.

Section 13, ch. 483, of the Collateral Inheritance Tax Law of 1885 (N. Y.) designates the surrogate to act as an assessing or taxing officer. In such capacity he acts as the State's representative. *Matter of Wolfe*, 137 N. Y. 205.

279. County Judge—Is Made a Taxing Officer—Fixes Tax "as of Course". Is a Special System of Taxation.

In reviewing the Section of the New York Transfer Tax Law of 1892 providing for the appointment of an Appraiser and the assessment of the tax, the Court held:

The statute constitutes the surrogate, and him alone, the assessing and taxing officer. After the Appraiser has appraised the property the surrogate enters his order fixing the tax "as of course," and thereafter any person aggrieved may appeal therefrom. By both the initial Act of 1885 and the subsequent one of 1892, a special state tax not belonging to the system of general taxation, was created. *Weston v. Goodrich*, 93 Sup. Ct. Rep. (N. Y.) 194.

280. County Judge—Order of Tax Must be Entered "Forthwith". Objection to Order Cannot Then be Made.

The Appellate Division (N. Y.) in construing Section 8, ch. 173, L. 1901, of New York, which relates to the appointment of an Appraiser and the report of said Appraiser to the County Judge and the entry of the tax order, said:

"By the provisions of Section 8, ch. 173, it is provided 'that the report of an Appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the State Comptroller.' From such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith as, of course, determine the cash value of all estates and the amount of tax to which the same are liable."

The only fair understanding of Section 8, Ch. 173, L. 1901, is that the surrogate shall proceed without the intervention of anyone when he has such report before him. *Matter of Fuller*, 62 App. Div. (N. Y.) 428. *Dixon v. Russell*, 73 Atl. 51.

281. County Court—Has Power to Determine All Questions Relating to Taxation.

The Collateral Inheritance Tax Law of 1885, as

amended in 1887 gives the Surrogate Court plenary power to determine all questions bearing upon taxation, and may construe a will for that purpose, or pass upon the testacy or intestacy of decedent. *Matter of Ullman*, 137 N. Y. 403; *Re Peters Estate*, 74 N. Y. S. 1028.

282. County Court—Construction of Will Conclusive Only as to Taxation.

The judgment of a surrogate under the Collateral Inheritance Tax Act (N. Y.) interpreting the will or deciding the testacy of a decedent adjudicates the question of taxation only. *Amherst College v. Ritch*, 151 N. Y. 282. *Matter of Ullman*, 137 N. Y. 403. *Re Peter's*, 74 N. Y. S. 1028.

283. When State not Bound by Construction of Will.

"An executor who takes one-third of residuary estate absolutely unencumbered by any trust, imposed by the will itself, is not relieved from the tax imposed by Law of 1887 (N. Y.) by a judicial construction based on extrinsic evidence, that said executor took the bequest charged with a trust in favor of testatrix's brother." McElroy on the Transfer Tax Law (N. Y.) 2nd Ed. 58-59, citing, *Matter of Edson*, 38 App. Div. (N. Y.) 19, aff'd 159 (N. Y.) 568.

284. County Judge Has Original Jurisdiction to Determine Tax.

In a suit to construe a certain provision of the will of decedent instituted in the Supreme Court of the State of New York, the trustee also requested the Court to ascertain whether the property limited by the provision of the will in question was subject to the Collateral Inheritance Tax. The Court held, that the Supreme Court was without jurisdiction to determine originally whether

a tax was due. That taxation is a subject outside of the jurisdiction of courts of equity. That the surrogate and the Surrogate Court was invested by the Collateral Inheritance Tax Act with the power to determine questions of taxation thereunder. *Weston v. Goodrich*, 93 Sup. Ct. Rep. (N. Y.) 194, 86 Hun 194.

285. Appraiser.

The County Judge may appoint Appraiser whenever occasion may require. *Matter of Lansing*, 64 N. Y. S. 1125.

286. Commission to Take Evidence.

A Surrogates' Court has power to issue a commission to take the testimony of foreign witnesses in a proceeding under the Transfer Tax Law. *Re Wallace*, 71 App. Div. (N. Y.) 284.

287. May Compel Witness to Testify.

A witness who refuses to respond to material interrogatives may be forced to answer by a contempt proceeding; no rights are lost to the witness to have taxes reduced by such refusal. *Matter of Kennedy*, 113 App. Div. (N. Y.) 4.

288. Not Concluded from Taxing Property Escaping Taxation because of Executor's Claim it was not Part of Estate.

Property which has escaped taxation in the first appraisement, either by omission through inadvertence, or because it was not scheduled by the executor on the ground it was not a part of the estate, may be the subject of another appraisement and the surrogate may appoint an Appraiser for the purpose of determining the

taxation thereof, under Laws 1892, which provide that the surrogate shall as often as, or whenever occasion may require, appoint a competent person as Appraiser. *Re Lansing's Estate*, 64 N. Y. S. 1125; *Re Niven*, 61 N. Y. S. 956.

289. Order of Tax—Is Final as to Property Involved.

“Where the Appraiser is duly appointed and notice of appraisal given and the report confirmed after due notice to the City Comptroller, the State cannot hold the executor personally for the taxes on legacies improperly found exempt by the Appraiser. (*Matter of Vanderbilt*, 10 N. Y. S. 239.)” Greene’s Law of Taxable Transfers, 2nd Ed. 65.

290. Order of Tax is Final When notAppealed From.

Decedent died a resident of New York in December, 1893, limiting a fund of \$30,000.00 in trust for the life of his step-daughter, or, until she was married. The residue of the estate was limited in trust for the benefit of his daughters. The Appraiser found that the value of the life interest of the respective daughters, as well as the remainders could not be determined, and he made a similar finding as to the \$30,000.00 trust. This report was approved by the surrogate July 16th, 1894. On November 16th, 1898, another Appraiser was appointed to determine the tax on the estate of said decedent and he made a report that “no evidence has been presented showing deceased left any property within the State of New York subject to the transfer tax.” It did not appear that any order was made confirming this report, but on December 27th, 1901, another Appraiser was appointed for determining the tax in the estate of said decedent,

which Appraiser reported April 22nd, 1903, that the income paid to the step-daughter and the three daughters of decedent from the date of testator's death to the time report was made, were subject to tax. This report was confirmed by an order of the surrogate insofar as it imposed a tax upon the interests of the daughters as fixed. An appeal was taken from this last order on the ground that the first order entered July 16th, 1894, was a complete bar to further proceedings. The Court held:

"The report made by the first Appraiser which was confirmed by an order of the Surrogate's Court, precludes subsequent action to determine and fix the transfer tax until the happening of one or the other of the events specified which terminates such trust estates. The situation now is precisely what it was when that order was made, except the amount of income paid, and the right to assess the transfer tax manifestly does not depend upon this. (*Matter of Sloane*, 154 N. Y. 109.) That order is in effect, a final determination of the subject and is effectually binding, there being no change in the estate, upon the Comptroller and the executor so long as it remains in force. This order was not appealed from. It is the law applicable to the question presented and the Comptroller can no more avoid its effect than can the executor and trustee named in the will. It is binding upon both equally and cannot be avoided by instituting a new proceeding and thereby getting another referee to make a different report. If this could be done, it is not difficult to see that a trustee under a will similar to this one might be subjected to a large personal liability. (Laws 1892, ch. 399, par. 3, 4) even though he strictly obeyed the order of the Surrogate's Court." *Matter of Lawrence*, 96 App. Div. (N. Y.) 29.

291. Order of Tax Cannot be Modified Except by Appeal—Excessive Valuation not Reviewable on Petition.

The surrogate acting as assessor fixed the value of

property in an appraisement proceeding by the approval of an Appraiser's report, at the sum of \$290,000.00. No appeal was taken from this order. Subsequently a motion was allowed by the surrogate vacating the order of tax on the ground that the value as fixed was excessive and that the real value of the property was \$139,700.00. The Court held: The first determination of the surrogate resulted fairly in a judicial determination in fixing the value of the property. Such determination may be treated no more lightly than the solemn determination of courts of record and should not be set aside except under circumstances similar to those held sufficient to warrant granting a new trial in courts of record. (*Matter of Lowry*, 89 App. Div. (N. Y.) 226; *Matter of Barnum*, 129 App. Div. (N. Y.) 418.

292. Order of Tax is Final.

A surrogate entered an order fixing tax which was not appealed from. Subsequently he set aside said order on a motion that certain securities were erroneously assessed. The court held: "We fail to find our attention has not been called to any authority conferred upon the surrogate to make such an order as the one appealed from. There are provisions for reviewing the determination of the surrogate by appeal and there are provisions authorizing him under certain circumstances to modify and set aside adjudications. *Matter of Schermerhorn*, 38 App. Div. (N. Y.) 350; *Matter of Crerar*, 56 App. Div. (N. Y.) 479.

293. Order of Tax is Final and Reappraisement Cannot be Made.

Some time subsequent to the date of an order of tax which fixed the value of real estate and the tax thereon,

such real estate was sold at public auction and the prices realized were greatly in excess of the values fixed in the appraisal. The comptroller moved for a reappraisement. The Court held: In substance that the Comptroller's evidence should have been adduced at the appraisement, and that the order could not be opened on motion. *Matter of Bruce*, 59 N. Y. S. 1083.

294. Order of Tax is Final and Can Only be Reviewed by Appeal.

In an appraisement of the estate of Joseph L. Lowry, the decedent's real estate was valued by the Appraiser at \$200,000.00. This estimate was made by Cornelius Fergueson, one of the trustees under decedent's will. The Appraiser's report was approved by the surrogate on December 30th, 1902. In April of the following year the decedent's real estate was sold fairly and in good faith at public auction for \$103,050.00. Acting evidently upon the assumption that this sale was better proof of the actual value of the lands than the expert evidence of the trustees upon which the Appraiser's report was based, and expressly holding that a mistake of fact had been made in fixing the value of the real estate at \$200,000.00, the surrogate modified the original order of tax and report of the Appraiser by reducing the valuation to the sum of \$103,050.00. The Comptroller objected. The Court held:

"Under the Transfer Tax Law the Surrogate's Court may do any act in relation to such a tax authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction (L. 1896, ch. 908, Sec. 229); and in such matters or proceedings he may open, vacate, modify or set aside, or enter as of a former time a decree of his Court; or may grant a new trial or hearing for

fraud, newly discovered evidence, clerical error or other sufficient cause.

Inasmuch as the learned surrogate has expressly based the original modification of his decree upon a mistaken fact in the appraisal which he approved, the principal question to be considered upon the present appeal is whether the errors of fact for which a court of original jurisdiction has power to vacate or modify its judgments, include the determination of a question of value on the trial or hearing; which determination, although made on competent evidence, appears to have been erroneous in the light of events which have occurred since it was made; I do not mean matters then existing and subsequently discovered but occurrences which have happened wholly subsequent to the trial or hearing * * *. Of course, if a transfer decree can be modified by securing the valuation placed upon the real property of a decedent by the surrogate because it subsequently sells for less than its estimate, it may be modified by increasing such valuation in a case where the property subsequently sells for more. It seems to me that an error of this character * * * must be determined to be an error arising upon a trial and hence, to be not within the purview of Section 1283, Code Civ. Proc. as made applicable to the surrogate's court by Section 2481. * * * A practice which would permit judgments fixing values to be open from time to time in cases where a subsequent sale of the appraised property tended to show the figure fixed by the judgment was too large or too small would lead to intolerable uncertainty and confusion." *Matter of Lowry*, 89 App. Div. (N. Y.) 226-228.

295. Cannot Amend Order Assessing Tax.

The surrogate is without power to amend or open a tax order, either on error of law or fact, without appeal. *Matter of Coogan* is distinguished on the reasoning that the U. S. bonds were without the jurisdiction, and the order of tax therein void. *Matter of Wallace*, 28 Misc. Rep. (N. Y.) 603.

296. Can Amend or Correct Order without Appeal.

Where there was no jurisdiction to assess U. S. bonds in an appraisement under L. 1892, (N. Y.), the surrogate has power under L. 1896 to modify order without appeal and direct a refund, although the time of appeal has expired. *Matter of Coogan*, 27 Misc. Rep. (N. Y.) 563, aff'd 45 App. Div. (N. Y.) 628; 162 N. Y. 613.

297. Cannot Reverse Order of Tax on Motion.

Surrogate cannot without appeal, decree prior order erroneous on the ground payment was made in error. *Matter of Schermerhorn*, 57 N. Y. S. 26.

298. Order of Tax is a Decree or Order of Court.

It was contended that the order of tax was not an order or decree in the ordinary sense of that term. In passing upon this question, the Court said:

"It is conceded that the specific act under which the tax was imposed has been declared by the Court of Appeals to be unconstitutional, and it must follow that the decree of the Surrogate's Court assessing and fixing the tax was void. The appellant urges that although a void order or judgment of a court may be vacated by that Court without restricting the aggrieved party to his remedy by appeal, still in this case the surrogate is in fact not a surrogate at all when he is fixing a transfer tax, but rather a taxing officer acting ministerially, and devoid of power except that conferred upon him by the Tax Law, and that the surrogate as such, has no power to vacate a decree made by the surrogate as taxing officer. Assuming that when he is fixing a tax and making the decree assessing it he is not acting as a surrogate, as the appellant contends, yet the decree upon the taxation becomes a decree or order of his court, and we think that the language of the 6th division of Section 2481 of the Code of Civil Procedure, together

with that Section of 229 of the Tax Law (Laws 1896, ch. 908 as amd. by L. 1901, ch. 173), is broad enough to confer upon him complete jurisdiction to vacate void order of his court. This exact question was the subject of consideration in *Matter of Coogan*, (27 Misc. Rep. (N. Y.) 563; aff'd sub. nom. *Matter of Coogan v. Morgan*, 162 N. Y. 613), and we believe the conclusions reached there should be approved." *Matter of Scrimgeour*, 80 App. Div. (N. Y.) 389.

299. Surrogate Acts Judicially in Entering Order of Tax.

"It is perfectly true, of course, that the power of taxation is one which belongs to the legislative department, and it is equally true that some of the functions of a taxing officer are ministerial, but it is well established by authority that in determining the value of the property assessed, the extent of claims to exemption, etc., the taxing officer or board acts judicially. (*McLean v. Jephson*, 123 N. Y. 142, 149, and authority there cited; *Stanley v. Supervisors of Albany*, 121 U. S. 535, 550; *City of New York v. McLean*, 170 N. Y. 374, 383, and authorities there cited). To the extent that the surrogate acts judicially in determining the amount of tax to be imposed upon the privilege of receiving transfers of property there can be no doubt that there is a right of appeal, according to the theory of the learned counsel for the relator, and it must be presumed, upon this motion, that the appeal relates to the judicial acts of the surrogate." *Matter of Hull*, 109 App. Div. (N. Y.) 248.

300. Notice of Tax—Presumption of Service by County Judge.

It will be presumed that notice of the assessment was given as provided by law. *Matter of Miller*, 110 N. Y. 216.

301. County Judge—Must Enter Order According to Direction of Court of Review—Appeal Cannot be Taken in Piecemeal.

"An appeal cannot be taken from a judgment or order by piece-meal, *i. e.*, separate appeals cannot be taken from different parts of a judgment or order. There is no authority for two concurrent appeals from the same judgment by the same party on the same question."

The surrogate must enter the decree of the Court of Review according to the mandate thereof. *Matter of Cook*, 125 App. Div. (N. Y.) 114; 194 N. Y. 400.

302. Appraisement and Appraiser.

An appraiser is a public officer (*People ex rel. McKnight v. Glynn*, 106 N. Y. S. 956), and is appointed by the County Judge and takes an oath of office in each case in which he acts. His appointment is usually evidenced by a written or printed order in each case in which he acts, which order and oath are filed with the Clerk of the County Court. His powers and duties are of a quasi-judicial character. (*McElroy on Transfer Tax Law*, 2nd Ed. p. 399 and 400). Notice to all persons who have or claim an interest in the property appraisable must be served by the Appraiser, and a time and place fixed for hearings. The Attorney General is the representative of The People and is an "interested party," entitled to notice of all proceedings. (*Re Sholem*, 238 Ill. 203; *National Safe Deposit Co. v. Stead*, 250 Ill. 584).

In Cook County, Illinois, a notice should be given the Inheritance Tax Attorney who represents the Attorney General in Inheritance Tax matters in that County. The Appraiser must make written report to the County Judge

which shall show his conclusions of value. This report should contain all evidence taken, including exhibits.

303. Appraiser Fees.

Section 11 provides that the Appraiser shall be paid such compensation as the County Judge may deem just, not to exceed ten dollars per day for each actual day's service, out of the inheritance collected in the appraisement in which he acted; (Act of 1909). The Act of 1895, as amended in 1901, provided for payment of Appraiser out of any inheritance tax moneys in hands of County Treasurer. If no tax is collected in an appraisement under the Act of 1909, the Appraiser is not entitled to fees.

304. Expenses and Disbursements.

The Appraiser is entitled to reimbursement for moneys necessarily expended for witness fees, together with his travelling expenses. Stenographic services when reasonably valued and paid by him are allowed as disbursements in Cook County, Illinois.

305. Legal Counsel for Appraiser.

The appraiser cannot engage legal counsel and charge the expense to his services. (See Attorney General's opinions, *post.*)

306. Service is Had by Notice.

Service is had by mailing notice to interested parties. *Matter of Winters*, 21 Misc. Rep. (N. Y.) 552. *Re Vanderbilt's*, 10 N. Y. S. 239.

307. Appraisement Must Proceed Under Section Eleven of the Illinois Law.

The Court of Appeals has referred to Section 13, L. 1885 (N. Y.), as follows: When the machinery of this system is set in motion under Section 13 of the Act, whether upon application of interested parties or upon his own motion, the surrogate, by force of its provisions, is at once invested with the office and functions of assessor and has power to determine the question of whether the property of decedent which passes to others is subject or liable to taxation by the State. *Matter of Wolfe*, 137 N. Y. 205.

308. Inventory—State Has Right to Compel Filing.

Sholem died a resident of Illinois, March 1st, 1907, leaving a will, which was admitted to probate in the County Court of Edgar County. Executors qualified, but refused to file an inventory. On August 12th, 1907, the Attorney General filed a petition for an appraiser, who was accordingly appointed, and fixed the value of the estate without an inventory having been approved by the County Court.

The Attorney General prosecuted an appeal to the County Court, which appeal was dismissed on motion of the executors, on the ground that the Attorney General was not invested with the right of appeal, which order of the County Court was reversed. (*People v. Sholem*, 238 Ill. 233.) The proceeding was then reinstated in the County Court. The Attorney General thereupon petitioned the Court for an order on the executors to file an inventory, the prayer of which petition was denied and an appeal prosecuted to the Supreme Court. It was argued by the executors that the People's representative

had no right to urge that the statutes be complied with so far as filing inventories were concerned. The Court held:

"It would be strange doctrine to say that the People of the State, who are directly interested in the amount of an estate and entitled to know its extent and value for the purposes of an inheritance tax, have no right to call upon a court to enforce their laws. If the inventories had been filed as required by law, the representatives of the People might have been satisfied with the amount represented thereby as the taxable value, but in the absence of the inventories it was necessary to endeavor to ascertain, by means of witnesses, what property the estate had.

It is said, however, by counsel for the appellees, that the judgment ought not to be reversed if the ruling was wrong, for the reason that the People obtained all necessary information through the examination of witnesses. It may be that all the property of the estate was discovered and it may be that it was not, and in any event the People were required to take up an unnecessary burden. We can not say that the property was all disclosed, and much complaint is made that the court excluded competent evidence tending to show the amount of the estate. An effort was made to discover assets in the form of loans and mortgages on real estate in Edgar County, and the offered evidence was excluded by the court. Whether the rulings were right or wrong, it cannot be said that it made no difference that the court did not require the executors to make an inventory of all the property which had come to their hands, possession or knowledge, or that an inventory, under oath, by the surviving partners would have been of no use to the People." *People v. Sholem*, 244 Ill. 502.

309. Appraisement—Value Fixed at What Time.

All property should be appraised and the tax fixed on the succession thereto as of the date of death of dece-

ent. *Re Graves*, 242 Ill. 212; *Matter of Vassar*, 127 N. Y. 1.

310. Practice and Procedure—Which Law Governs.

Procedure and rate of tax may be governed by different Laws—Procedure by the Law in force when the appraisement is initiated—The tax by the Law in force at the death effecting the transfer. *Matter of Davis*, 149 N. Y. 539; *Re Sloane*, 154 N. Y. 109.

311. Contingent Estates—All Property Applicable—Tax Postponed.

All property, whether vested or contingent, should be appraised, but the tax upon a contingent estate must be postponed until the remainders are capable of valuation and the takers become indefeasibly vested in the property passing. (L. 1895.) *Billings v. People*, 189 Ill. 472.

312. Residence—Appraiser May Determine.

“Section 231, L. 1896 (N. Y.), seems broad enough to confer authority upon the appraiser to determine the question of residence in the first instance, as he is directed not only to issue subpoenas, compel attendance of witnesses, take evidence of such witnesses under oath, and report the same in writing to the surrogate, but he is also directed to report “such other facts in relation thereto, and to said matter as the surrogate may order or require,” and the general practice has been for the Appraiser to take the proof in relation to the decedent’s residence and report the same with his conclusions to the surrogate.” *McElroy on the Transfer Tax Law* (N. Y.), 2nd Ed. 206.

313. Appraiser—County Judge May Appoint before Claims Are Ascertained.

The County Judge has power to appoint an Appraiser and impose the tax due before it is ascertained what claims were owing by decedent at the time of death. *Matter of Westurn*, 152 N. Y. 93.

314. Appraiser Cannot Decide Question of Law.

An Appraiser is without power to determine the exemptions of beneficiaries; this power is, by statute, conferred on the surrogate. (Laws of 1885.) *Re Vanderbilt's Estate*, 10 N. Y. S. 239; *Re Astor*, 2 N. Y. S. 630.

315. Appraiser—May Hear Evidence on Deductions.

The law gives an Appraiser power to take evidence on deductions. *Wormser's Estate*, 73 N. Y. S. 748.

316. Evidence—Presumption in Absence of Proof of Jurisdictional Facts.

The record must disclose all material facts that are desired to be presented to the Court of Review. In a case where the record did not disclose that the property involved was within or without the State and where no point was made on this subject, it must be presumed that the transfer of the property was made within the State. *Matter of Keeney*, 194 N. Y. 281.

317. Evidence—Proof Must Clearly Identify Property Alleged to Have Been Transferred by Death.

In 1896, more than five years prior to the death of testator, it was claimed by a witness that the testator exhibited to him securities in a safe deposit box alleged

to be worth \$700,000.00. The executor did not account for that sum or explain where the securities were. The witness did not handle the securities and all he knew was the alleged value thereof as stated by testator. The witness was hostile to the estate of testator. The development of these facts did not shift the burden of proof to the executor and the evidence was held insufficient to sustain a tax thereupon. *Matter of Kennedy*, 113 App. Div. (N. Y.) 4.

318. Evidence—Presumption When Deposit in Name of Husband and Wife.

In an appraisement proceeding the following evidence was evolved relative to the right of the surviving widow in a savings account standing in her name and that of her deceased husband.

“Deponent further says that the deposits in the foregoing savings banks, except the deposit in the Irving Savings Bank, are made to Frederick Wilkens, the decedent, and to Mary Wilken, his wife, this deponent; that the deposits were made from the earnings jointly acquired by deponent and the said Frederick Wilkens in the prosecution of a retail liquor saloon business in the City of New York, which was sold in the year 1906.”

Held, to be sufficient to raise a presumption of equal ownership. *Re Wilkens Estate*, 129 N. Y. S. 600.

319. Evidence—Must Show Income Reserved.

In establishing the taxability of property transferred in the lifetime of a donor, evidence must be produced which clearly shows that the income from such property transferred was reserved to the donor. *Matter of Thorne*, 44 App. Div. (N. Y.) 8.

320. Joint Stock Association—Real Estate to be Considered in Valuation.

Shares of stock of a joint stock association owning real estate, are properly valued by including the real estate as part of the assets of the association. *Re Jones*, 59 N. Y. S. 983; 172 N. Y. 575.

321. Appraiser—Report May be Returned for Additional Proof.

“The Appraiser’s report may be sent back to him for additional proof in case the surrogate has not acted upon it. (*Matter of Kelley*, 29 Misc. Rep. (N. Y.) 169.)” Greene’s Law of Taxable Transfers, 2nd ed. 77.

322. Appraisement—Second Appraisal not Permissible to Increase Value of Assets.

Property fairly appraised in a regular proceeding under the Tax Law cannot be subjected to a second appraisement in order to increase its value. The fact the property may have been sold after the first appraisement at a higher value than fixed therein is not material. *Matter of Rice*, 29 Misc. Rep. (N. Y.) 404.

323. Increase or Decrease in Value after Death not Material.

The increase or accumulation of property after the death of the owner cannot be subjected to a tax. The fact that the property may have depreciated in value after the death does not change the rule of fixing the value as of the date of death. *Re Hite*, 113 Pac. (Cal.) 1072.

324. Appraisement—Title of Case Must be in Name of Donor of Power.

The title of an appraisement should be in the name

of the donee of the power exercised, when the proceeding is designed to cover property passing by such transfer. *Matter of Lowndes*, 60 Misc. Rep. (N. Y.) 506.

325. Appraisement—Property not Included in Appraisement Can be Subsequently Appraised.

Subsequent to the appraisement of the estate of Mrs. Lansing, who died in October, 1893, it was determined that property purported to have been assigned by Mrs. Lansing to her daughter belonged to said deceased. This property was not included in the appraisement. The Court held the surrogate had power to appoint another appraiser to appraise the property purported to have been assigned, but which, in fact, belonged to Mrs. Lansing at the time of her death. *Matter of Lansing*, 31 Misc. Rep. (N. Y.) 148.

326. Appraiser—if in Doubt Reports Property Taxable.

Should questions be raised in an appraisement creating a doubt in the appraiser as to the taxability of property, his report should include it and recommend it for taxation. *Re Astor*, 17 N. Y. St. Rep. 787.

327. Appraiser—Duty Ended with Report.

When the appraiser returns his report to the County Judge his duty is ended. *Matter of Ludlow*, 4 Misc. Rep. (N. Y.) 594.

328. Misappropriation of Property by Executor Does not Relieve from Taxation as of Death of Decedent.

In an appraisement of decedent's estate, under the California Laws of 1905, it appeared that misappropri-

tion of funds was made by executor, thereby reducing the total amount of the estate, and it was urged that the amount of taxable property should be reduced to the extent of such loss. *Held*, that all property that passed at death was taxable, and the amount lost by misappropriation must be included. *Re Hites Estate*, 113 Pac. (Cal.) 1072.

329. Market Value—Fixed as of Date of Death.

The value of property is fixed as of the date of decedent's death. (*Re Graves*, 242 Ill. 212; *Ayers v. Title & Trust Co.*, 187 Ill. 42; *People v. Nelms*, 241 Ill. 571.)

"The true test of value by which the tax is to be measured is the value of the estate at the time of the transfer of title." *Matter of Davis*, 44 N. E. 185-187; 149 N. Y. 539.

330. Fair Market Value—Listed Stocks, Etc.

In an appraisement of the estate of Silas B. Cobb, in which there were holdings of large blocks of the capital stock of various corporations, the question arose whether sales on the Chicago Stock Exchange of small blocks of stock of the same kind as inventoried was the proper basis of valuation, in view of the probability that an offer on the stock exchange of the entire block or blocks of stock held by the executor might cause a large depreciation in the market. The Court held:

"One of the witnesses testified that if 6,237 shares of Railway Company stock were forced upon the market at one time the price of stock would be diminished and bring much less than the value as shown by the sale of a small block of stock on the date of death."

The same testimony was offered in regard to the other securities. The Court held:

"As we understand the position of counsel for appellants, it is that the market price of these stocks should have been fixed at the market price as it would be on a certain day, in case the entire holdings were forced upon the market, and a forced sale of the same was made without regard to the actual value of the stock per share, or the ordinary method of doing business, in reference to handling, purchasing or selling the same. We are unable to concur in the correctness of this view.

The property here, valued as it was, was valued at the fair cash market value thereof. Fair market value, as applied in this case, is not what the stocks would bring at a forced sale, but what they would bring at a sale after due notice of the facts, and under fair conditions in the ordinary course of business. The Inheritance Tax Law provides the method and machinery for the valuation of property coming within the operation of the law. Section 1 of the statute uses the expression 'clear market value of such property received by each person.' Section 11 uses the phrases, 'value,' 'fair market value,' and 'cash value.' In arriving at the fair value of property, the Appraiser, under the Act, has to be guided by the fair market value thereof, and in ascertaining the same is authorized to call witnesses for that purpose. Under the Act, the Appraiser and the County Judge and the County Court are not limited in the valuation of property to the market quotations of the same, but, for the purpose of finding the fair cash value of the same, they may use the quotations of the same on the public exchanges, private sales of such property, testimony as to the actual value of the same, and their own knowledge of the subject-matter.

'Fair market value' has never been construed to mean the selling price of property at a forced or voluntary sale. In *Peoria Gas Light Co. v. Peoria Terminal Railway Co.*, 146 Ill. 372, it was said (p. 377): 'The theory upon which evidence of sales of other similar property in the neighborhood at about the same time is held to be admissible, is that it tends to show the fair market value of the property sought

to be condemned. * * * But it seems very clear that, to have that tendency, they must have been made under circumstances where they are not compulsory, and where the vendor is not compelled to sell at all events, but is at liberty to invite competition among those desiring to become purchasers.'

The very fact that the market would be depressed by forcing large blocks of stock upon it, and forcing such large blocks of stock to sale, indicates that such a sale is not a proper test of the fair cash value of the stock.

It has been held in the State of New York, in passing upon the method adopted by an Appraiser in his appraisement of large quantities of stocks and securities, that the correct rule was adopted where the Appraiser based his appraisal upon public sales of securities at the stock exchange. (*In re Gould's Estate*, 46 N. Y. S. 506; *People v. Coleman*, 107 N. Y. 544.)

In re Gould's Estate, supra, it was said: 'It is claimed, however, that the rule should be so construed that, when the value of large blocks of stock is involved, only the purchase and sale in markets of correspondingly large blocks of stock should be considered, upon the theory that such large blocks would necessarily sell at lower rates than small quantities of stock sold separately, and that throwing large blocks of stock upon the market all at once would have a tendency to produce a break in the market, and perhaps a total inability to get more than a mere nominal price offered for that stock. * * * Under the construction contended for, the securities involved in this proceeding might have been shown to be of little or no value, by considering that forcing them upon the market in large blocks at one time would break the market, and make them practically unsalable at all. The rule adopted by the Appraiser was the correct rule, and he apparently applied it properly in determining the value of the large amount of securities belonging to the decedent's estate.' ' *Walker v. People*, 192 Ill. 106.

331. Market Value—Public Sales of Securities.

Public sales of securities on the Stock Exchange is a proper basis for the valuation of securities for the purposes of an appraisement under the Transfer Tax Law. "The market value of any stock which is listed at the Stock Exchange in New York and largely dealt in from day to day for a series of months will usually furnish the best measure of value for all purposes. The competition of sellers and buyers, most of them careful and vigilant to take account of everything affecting the value of stock in which they deal and each mindful of his own interests and seeking for some personal gain, will almost universally, if time sufficient be taken, furnish the true measure of the actual value of stock." *Matter of Gould*, 19 App. Div. (N. Y.) 352.

332. Market Value—Synonymous with True Value.

True value is synonymous with "real" or market value. *Mayor, etc., v. Tunis* (N. J.), 78 Atl. 1066.

333. Market Value—Fixed at Transfer or Whenever Ascertainable.

Whenever the appraisal is made, the value of the property is to be appraised according to the fair and clear market value of the interest at the time of the death of the testator. The command of the statute as it stood when this proceeding was instituted was to make the appraisal immediately after the transfer at the fair and clear market value thereof at that time, but if the interest was of such a nature that its fair and clear market value could not then be ascertained, it was to be appraised whenever such value could be ascertained. *Matter of Sloane*, 154 N. Y. 109.

334. When no Market Value—Actual Value is Taken.

In determining the value of shares of stock of a close corporation, which shares were not sold publicly, the Court sustained an Appraiser in basing his value upon the actual worth of secret remedies, good will, assets and earning capacity of the corporation. *Matter of Brandreth*, 28 Misc. Rep. (N. Y.) 468.

335. Market Value—Isolated Record Sales do not Determine.

In the valuation of the stock of a close corporation whose shares were owned by a family, but for which \$110.00 per share had been bid for the common and \$107.00 had been reported as the price of the sale of preferred, and which said stock paid in dividends annually ten per cent. on the common and seven per cent. on the preferred, the Court held: No evidence was given as to the intrinsic value of the stock outside of the fact that it paid certain dividends. "We may, however, take judicial notice of the fact that the value of industrial stocks often does not bear close apparent relations to the rate of dividends, which they may happen to pay at a given time, and the latter is not by any means a controlling gauge of values." (*Re Smith*, 71 App. Div. (N. Y.) 605.) It was determined that the preferred was worth \$97.50 and the common \$100.00. *Matter of Curttice*, 111 App. Div. (N. Y.) 230.

336. Market Value—Where Evidence of Sales is not Contradicted or Rebutted, Such Evidence Must Prevail.

Testatrix died a resident of the State of New York in March, 1897, owning shares of stock in a close corpora-

tion, organized under the laws of the State of West Virginia, having its principal place of business at Philadelphia, Pennsylvania. The Appraiser fixed a value of \$70,000.00 on 1,382 shares. On an appeal by the executor it was developed that the stock paid six per cent. in dividends between March and December, 1896, and that subsequent to the death of the decedent, the stock averaged ten per cent. per annum. In the years 1896 and 1897 stock had been sold for \$50.00 per share; that 500 shares were sold at \$50.00 per share in July, 1897. An officer of the company testified that he considered \$50.00 a share a fair value. There was no evidence as to the actual earnings of the company, except the general statement of the officers of the company, that dividends were declared out of its earnings, and there was no other evidence of sales or bids in addition to the above. The Court held: We do not think the evidence adduced would justify a finding that the stock was worth over \$50.00 per share. *Matter of Smith*, 71 App. Div. (N. Y.) 602.

337. Market Value—Good Will Can be Taken into Account in Determining Market Value.

In an appraisement of the shares of a newspaper corporation it was held that the good will of the company constituted property which should be considered in arriving at the value of the stock. *Re Jones*, 59 N. Y. S. 983.

338. Range of Market.

In considering the length of time constituting a reasonable period within which to consider sales of securities as a basis of valuation, it was held that a three-months period was reasonable. *Matter of Crary*, 64 N. Y. S. 566.

DEDUCTIONS.

339. In General.

All enforceable indebtedness due from or chargeable against a decedent, in his or her lifetime, and unpaid or discharged at the time of, or by death, and which is collectible from decedent's estate, when properly proven in an appraisement proceeding, is deductible from the gross assets chargeable therewith and is not subject to taxation.

The tax is imposed on the net estate or property transferred.

In addition to the indebtedness of a decedent the costs of administration (*Re Graves*, 242 Ill. 212; *Connell v. Crosby*, 210 Ill. 380) and reasonable funeral expenses are deductible, although no express provision is made by the tax law for such deduction. In the administration cost is included: executor or administrator fees and the fees of the attorney for executor or administrator performed in the course of their duties as such. Where it is necessary for an executor to defend a will or codicil, the fees of his counsel is a charge deductible from the assets of the estate in an appraisement proceeding. (*Connell v. Crosby*, 210 Ill. 380.)

The costs of the Clerk of the Court of Probate are deductible as a necessary charge against the assets.

Mortgages and liens chargeable to real property at the time of death, together with accrued interest to that date, should be deducted.

340. Amount of Administration Fees Allowed.

Where an appraisement is closed before the termination of the administration, it is practically impossible

to determine the amount of fees that will be earned by either the executor, administrator or attorney. It is true there is a maximum percentage fixed by law for the executor or administrator, but it is not known until the termination of their duties what compensation they are entitled to. The amount of fees allowed by the Court of Probate, when based on service performed, may be the proper amount to allow as a deduction in the appraisement, but the County Judge is not directed by law to accept the opinion of the Court of Probate.

Fees allowed by a Court of Probate based upon an agreement of parties should be received by the Appraiser as information only, and be subjected to careful examination to determine whether they represent a fair amount for deduction.

In case, however, fees have been paid to executor, administrator and attorneys and the legal representative discharged, the Appraiser should not allow more than the sum actually received by such legal representative and attorney. If no fees were paid, none should be allowed in the appraisement. The reason for this is manifest, in that the tax is based on the value of the property transferred, less charges.

Where an appraisement is closed before the termination of administration, the practice of the County Judges of Cook County has been to direct the Appraiser to estimate an amount to cover fees and costs, and thus avoid delaying the appraisement.

341. Attorney's Fees and Executor's Commissions for Administration and Defending Will—Claims of Non-Residents.

William Drury died a resident of Illinois on March 13th, 1897, seized and possessed of real estate in Illinois

of the value of \$199,000.00; personal property, \$27,000.00, and real estate in Kansas, Colorado, Nebraska and Texas of the aggregate value of \$94,000.00. Decedent's indebtedness totaled \$126,000.00 in addition to costs and expenses of settlement of the estate. All of the indebtedness was due creditors who resided in Illinois, except a note of \$45,000.00 which was due a citizen of Minnesota, but made especially payable at Keithsburg, Mercer County, Illinois. The Court below held that in order to ascertain the amount on which to compute the tax, the value of the personal property should be deducted from the total indebtedness of the estate and the remaining indebtedness should be apportioned on all the real estate, either foreign or domestic, and the tax laid upon lands in Illinois, less the apportionment. On review, the Supreme Court held:

"The lands in the sister states were not subject to any specific liens to secure any of the indebtedness or specially charged with the payment of any part of it by any act of the testator, nor was any of the indebtedness due to any citizen of any sister state in which such lands were situate. This ruling operated to increase the amount on which the tax was required to be paid to the extent that the remainder of the indebtedness was so apportioned on the lands in sister states, and by indirection laid a tax on the foreign lands, which, as we have seen, could not be lawfully directly imposed thereon. The ruling was erroneous. If the foreign lands had in any way been subject to an encumbrance or lien, vendor's or otherwise, to secure the payment of indebtedness of the testator, or if the indebtedness had been due to a citizen of the sister state wherein was situated the real estate belonging to the decedent, a different question might be presented."

Another question arose in this case relative to the deduction of \$12,000.00 expended by the executors in em-

ploying counsel to defend the will of decedent. The Court held, upon this question, that the expenses in defense of the will should have been deducted and that administrator's and solicitor's fees in the administration is a proper deduction. *Connell v. Crosby*, 210 Ill. 380.

342. Deductions Must be Presented at Appraisement—Not Afterward.

Deductions not presented to the Appraiser cannot be allowed by the surrogate, on motion to amend order of tax. *Matter of Morgan*, 36 Misc. Rep. (N. Y.) 753; 74 N. Y. S. 478.

343. Allowance of Decedent's Debts.

"Where no proof is made, except by an affidavit of an attorney at law, that a claimed creditor was advised that by a true construction of an agreement he was entitled to claim as survivor, and that the children of the decedent who took his estate were also so advised, there is no proper evidence of the existence of a claim, and nothing upon which a deduction for it could be allowed. (*Matter of Wormser*, 51 App. Div. (N. Y.) 441; modifying 28 Misc. Rep. (N. Y.) 608.)" Greene's Law of Taxable Transfers, 39.

344. Commissions of Administrator.

Fees of an administrator should be allowed as a deduction in determining the net taxable assets. *Matter of Westurn*, 152 N. Y. 93.

345. Commissions of Administrator—May be Estimated.

The fees of an administrator is a proper deduction from the assets of an estate. The Appraiser may esti-

mate the total fees allowable, if administration is not closed at the time of the tax proceeding. *Matter of Gould*, 46 N. Y. S. 506.

346. Expenses of Administration.

Expenses of administration, being a charge on the estate, and not to the legatees or devisees, are proper deductions. In the contest of the probate of a will the fees of a temporary administrator are proper deductions. The transfer tax is on the succession of the legatee, devisee or heir who takes what remains of the estate on distribution after settlement. The amount represented by the administration expenditures never passes to the legatee. (*Matter of Westurn*, 152 N. Y. 93, distinguished.) *Matter of Gihon*, 169 N. Y. 443, modifying 64 App. Div. (N. Y.) 504.

347. Real Estate Taxes—Deductible.

C. E. Detmold died testate a resident of New York, July 2d, 1887. His will transferred all his property to his daughters for life, with remainder to their issue—all of which property was subject, however, to a certain annuity payable to his wife. Decedent's real estate had been assessed previous to his death for the general taxes of 1887 and the assessment rolls "had been delivered to the aldermen for the ascertainment of the amount of the tax and its extension by them upon the rolls." It was claimed by the remaindermen that these general taxes should be paid from the income of the estate going to the life tenants and that it was, therefore, improperly charged by the executors as liabilities of the estate of decedent. The sole question was, whether such taxes constituted a liability of the estate. *Held*; that a construction of the general laws of New York, which construction

would be governed somewhat by an endeavor to protect the State, makes such taxes a charge against decedent's estate. *Matter of Babcock*, 115 N. Y. 450.

348. General Revenue Taxes Charged to Real Estate Should be Deducted.

Real estate taxes chargeable to decedent's real estate prior to his death are deductible in an appraisement proceeding. *Re Liss' Estate*, 78 N. Y. S. 969.

349. General Revenue Tax—When not Deductible in an Appraisement.

Real estate taxes are not deductions until they are fixed and become a debt against the land. "Taxation cannot create a debt until there is a tax fixed in amount and perfected in all respects. It is not enough to lay the foundation, but the structure must be built. There can not be a complete tax upon real estate until it is so perfected as to become a lien, because until then the amount cannot be known. (*Buckout v. City of New York*, 176 N. Y. 363; 68 N. E. 659.)" (*In re Freund's Estate*, 128 N. Y. S. 48.

350. Trustees—Commissions not Deductible.

Trustees objected to an order fixing tax approving an Appraiser's report on the ground that the Appraiser refused to allow trustee's commission. The Court held: There is no doubt as to the correctness of deducting commissions of an executor or administrator. When the executor is discharged and the property turned over to the trustee "for the benefit of those ultimately entitled to receive it, it is in the nature of a luxury for the beneficiaries" and the beneficiaries should pay and be charged with the cost of maintaining the trust. There is no sub-

stantial reason why the State should have the tax diminished by the fees of a trustee. *Matter of Becker*, 26 Misc. Rep. (N. Y.) 633.

351. Deductions—Mortgages not Deductible from Personality.

An Appraiser should not deduct mortgages upon real estate from the personal property because of a direction in a will to that effect. *Matter of Berry*, 23 Misc. Rep. (N. Y.) 230. *Re Livingston*, 1 App. Div. (N. Y.) 568; *Re Offerman*, 25 App. Div. (N. Y.) 94. *Matter of Sutton*, 3 App. Div. (N. Y.) 208.

352. Inheritance Tax—Not Deductible.

Testator directed his executor to satisfy the Inheritance Tax out of his residuary estate. Held that the Inheritance Tax assessable was not deductible. *Re Swift*, 137 N. Y. 77.

353. Deductions—Inheritance Tax.

The Federal Inheritance Tax is not a legal deduction. *Matter of Gihon*, 169 N. Y. 443; *Matter of Becker*, 26 Misc. Rep. (N. Y.) 633. *Re Curtis*, 31 Misc. Rep. (N. Y.) 83; *Matter of Irish*, 28 Misc. Rep. (N. Y.) 647.

354. Burial Lot—When Cost is Deductible.

The expense of a burial lot is deductible. *Re Liss' Estate*, 78 N. Y. S. 969.

355. Deductions — Second Appraisement — Assets Increased by Defeating Claims Against Estate.

After an appraisement has been completed, and time

of appeal had expired, the executor of the estate succeeded in defeating certain claims which had been allowed by the Appraiser as deductions. This increased the assets of the estate. Held, that a new appraisement of such assets accruing by reason of the success of the executor in defeating claims could not be had. *Re Rice*, 29 Misc. Rep. (N. Y.) 404.

356. Doubtful Deductions Rejected.

If a claim is not admitted by the executor, and if such claim will be contested it should not be allowed as a deduction. Neither should the question be reserved until settlement of the claim. *Re Rice*, 29 Misc. Rep. (N. Y.) 404.

357. Deduction—Note in Litigation.

When part of the assets of an estate consist of a note upon which the administrator has brought suit for collection such note should not be valued. This note is taxable when determined to be good. *Matter of Westurn*, 152 N. Y. 93.

358. Deductions—Legal Services for Construction of Will.

An Appraiser allowed \$3,500.00 to cover the probable expenses of a suit to construe a will. This action was brought by said executors, both in their individual and representative capacity. The Court held: "The action (suit to construe will) would seem unnecessary, as any question that may arise can readily be settled in the Surrogate's Court by the decree for distribution. Further, it would appear that its principal object is to benefit the personal interests of the executors. Sum of \$3,500.00 disallowed. *Matter of Thrall*, 30 App. Div. (N. Y.) 271. Aff'd *Matter of Thrall*, 157 N. Y. 46.

359. Deductions—Expenses of Litigation between Distributees not Deductible.

Where distributees of an estate involve themselves in litigation, the cost of such litigation is not deductible. Such cost is in no sense a charge of administration of the estate. *Re Sanford's Estate*, 123 N. Y. S. 284.

360. Ante-Nuptial Contract Does not Create an Indebtedness of the Estate.

Money paid to a widow in lieu of dower and of all other interests she has as widow pursuant to the terms of an ante-nuptial contract is not a legal deduction from the estate of husband. *People v. Estate of Marshall Field*, 248 Ill. 147.

361. Debts of Non-Resident Estate—What Deductible from New York Assets.

"In valuing stocks and bonds owned by a nonresident decedent, but actually within the State of New York, general indebtedness of the decedent to creditors in New York should not be offset against such assets, particularly when such creditors have in their hands the legal title and the right to resort for the payment of their debts to securities belonging to the decedent which are not taxable under the laws of New York. (*Matter of Pullman*, 46 App. Div. (N. Y.) 574.)" Greene's Law of Taxable Transfers, 40.

362. Deductions—Pro Rated in Non-Resident Estates.

In an appraisement under the Transfer Tax Laws of New York, 1908, which provides in substance that whenever the property of a resident deceased, or of a non-resident decedent, within the state, transferred by will is

not specifically bequeathed, such property shall be deemed for the purpose of taxation to be transferred *pro rata* among all of the general legatees, including residuary legatees, the Court held: That executor could not elect property for the payment of general bequests; that all of the property of decedent must be distributed *pro rata*; that deductions should be pro rated; *Re Porter's Estate*, 124 N. Y. S. 676. *Re Gordon's*, 186 N. Y. 471. (See *Matter Grosvenor*, 124 App. Div. (N. Y.) 331.)

363. Debts—When Chargeable to Assets at Domicile of Non-Resident Deductions Should be Proportioned.

The Collateral Inheritance Tax Law of the State of Iowa provides for a tax on nonresidents, upon the property transferred by death when within the jurisdiction of said State. Such property is chargeable with the debts of the estate pro rated according to the percentage which the property in Iowa bears to the entire estate. *Wieting v. Morrow*, 132 N. W. 193.

364. Apportionment of Debts between Exempt and Non-Exempt Property.

Debts of a decedent are chargeable to his entire estate and not to a particular part of his estate, thus when decedent owned government bonds exempt from taxation, the debts were not all deductible from the taxable property, but should be pro rated between the taxable and not taxable property. *Matter of Purdy*, 24 Misc. Rep. (N. Y.) 301.

365. When One Co-Tenant Furnishes Money for Improvements.

Money expended on permanent improvements by a co-tenant when in excess of an expenditure of the de-

ceased co-tenant, should be equalized by deducting the excess from decedent's estate. *Re Woods Estate*, 123 N. Y. S. 574.

366. Appeal—County Judge to County Court.

Any person dissatisfied with the appraisement or assessment may appeal to the County Court. The Appeal lies from the County Judge's order of tax. *Re Sholem*, 238 Ill. 203.

367. County Court to Supreme Court.

The appeal from a judgment of the County Court lies direct to the Supreme Court. *Re Sholem*, 238 Ill. 203.

368. Practice in Cook County, Illinois.

By practice in the County Court of Cook County, it is necessary for the appellant to set forth the grounds of appeal in a petition. The appeal is perfected by giving satisfactory bond within sixty days from the entry of the County Judge's order of tax. The amount of the bond is usually twice the tax and interest, and sureties must generally schedule real estate clear of liens or other property sufficient to insure a prompt liquidation in a suit by the State.

369. Appeal—De Novo—Common Law Proceeding —Bill of Exceptions.

An appeal in the County Court is a *de novo* trial and a common law proceeding.

"Exceptions as to the admission of evidence and as to the sufficiency of the evidence to sustain the finding of the trial court must be preserved by bill of exceptions as in common law proceedings." *People v. Mills*, 247 Ill. 620; *People v. Moir*, 207 Ill. 180.

370. Notice of Appeal—Attorney for State Comptroller Cannot Waive and Confer Jurisdiction.

The admission by the attorney for the State that notice of appeal was served within the statutory period does not confer jurisdiction, if the time of appeal has expired. *Re Seymour's Estate*, 128 N. Y. S. 775.

371. Appeal.

Additional allegations to the petition of appeal may be filed by appellant, even though motion is not made until after the expiration of the sixty day period provided for perfecting appeal. *Matter of Westurn*, 152 N. Y. 93.

372. Appeal—Is Necessary to Review Correctness of Assessment—Deductions Must Be Presented to Appraiser.

After the time for appeal had expired, the administratrix by motion, requested that the order of tax be amended by deducting from the total property appraisable, physicians, undertakers, cemetery and other charges that she had not presented in the appraisement. The Court held, that she had full opportunity to present the claims before the appraiser. Further, that the statute provided a method for reviewing all questions by appeal within sixty days from the date of the order, and that the administratrix was barred. *Matter of Hacket*, 14 Misc. Rep. (N. Y.) 282.

373. Executor May Appeal.

The executor is an interested party. The Tax Law makes him personally liable for the payment of the tax. Being an "interested party" he may appeal from the order of tax. *Matter of Cornell*, 66 App. Div. (N. Y.) 162, modified in 170 N. Y. 423.

374. United States Supreme Court—When Construction of State Court Will be Followed.

“While it is settled law that this court will follow the construction put by the state courts upon wills devising property situated within the state, and while it is also true that we adopt the construction of its own statutes by the state courts, a question may remain whether the statute, as so construed, imports a violation of any of the rights secured by applicable provision of the Constitution of the United States. And such is the contention here.

This court has no authority to revise the statutes of New York upon any grounds of justice, policy or consistency to its own constitution. Such questions are concluded by the decision of the legislative and judicial authorities of the State.

In *Carpenter v. Pennsylvania*, 17 How. 456, the question arose as to the validity, in its Federal aspect, of a law of the State of Pennsylvania imposing an inheritance tax on personal property which had passed into the possession of an executor before the passage of the Act, and which was held by him for the purpose of distribution among the legatees, who were collateral relatives to the decedent. The act was held valid by the Supreme Court of the State, and was brought up to this Court by a Writ of Error where it was contended that such an act was in its nature an *ex post facto* law, which took the property of an individual to the use of the state, because of a fact which had occurred prior to the passage of the law, and also that the law, in its retroactive effect, impaired the obligation of a contract, in that it was alleged to absolve the executor from his contract, implied in law, to pay over the legacies to those entitled to them, just to the extent that the law required him to pay to the state. The opinion of the Court, delivered by Mr. Justice CAMPBELL, was in part as follows:

‘The validity of the Act, as affecting successions to open after its enactment, is not contested; nor is the authority of the State to levy taxes

upon personal property belonging to its citizens, but situated beyond its limits, denied. But the complaint is that the application of the Act to a succession already in the course of settlement, and which had been appropriated by the last will of decedent, involved an arbitrary change of the existing laws of inheritance to the extent of this tax, in the sequestration of that amount for the uses of the State; that the rights of the residuary legatees were vested at the death of the testator, and from that time those persons were nonresidents and the property taxed was also beyond the State; and that the State has employed its power over the executor and the property within its borders, to accomplish a measure of wrong and injustice; that the act contains the imposition of a forfeiture or penalty; and is *ex post facto*.

It is, in some sense, true that the rights of donees under a will are vested at the death of the testator; and that the acts of administration which follow are conservatory means, directed by the State to ascertain those rights, and to accomplish an effective translation of the dominion of the decedent to the objects of his bounty, and the legislation adopted with any other aim than this would justify criticism, and perhaps censure. But, until the period for distribution arrives, the law of the decedent's domicile attaches to the property, and all other jurisdictions refer to the place of the domicile as that where the distribution should be made. The will of the testator is proven there, and his executor receives his authority to collect the property, by the recognition of the legal tribunals of that place. The personal estate, so far as it has a determinate owner, belongs to the executor thus constituted. The rights of the donee are subordinate to the conditions, formalities, and administrative control, prescribed by the State in the interests of its public order, and are only irrevocably established upon its abdication of this control at the period of distribution. If the State, during this period of administration and control by its tribunals and their appointees,

think fit to impose a tax upon the property, there is no obstacle in the Constitution and laws of the United States to prevent it. *Ennis v. Smith*, 14 How. 400.

The Act of 1860, in enlarging the operation of the Act of 1826 and by extending the language of that Act beyond its legal import, is retrospective in its form; but its practical agency is to subject to assessment property liable to taxation, to answer an existing exigency of the State, and to be collected in the course of future administration; and the language retrospective is of no importance, except to describe the property to be included in the assessment. And as the Supreme Court of Pennsylvania has well said, 'in establishing its peculiar interpretation, it (the legislature) has only done indirectly what it was competent to do directly.' But if the Act of 1850 involved a change in the law of succession, and could be regarded as a civil regulation for the division of the estates of unmarried persons having no lineal heirs, and not as a fiscal imposition, this Court could not pronounce it to be an *ex post facto* law within the tenth section of the nineteenth article of the Constitution. The debates in the Federal Convention upon the Constitution show that the terms '*ex post facto* laws' were understood in a restricted sense, relating to criminal cases only, and that the description of Blackstone of such laws was referred to for their meaning. (3 Mad. Pap. 1399, 1450, 1579.) This signification was adopted in this Court shortly after its organization, in opinions carefully prepared, and has been repeatedly announced since that time. (*Caldver v. Bull*, 3 Dall. 386; *Fletcher v. Peck*, 6 Cranch, 87; 8 Pet. 88; 11 Pet. 421.)'" *Orr v. Gilman*, 183 U. S. 278.

CHAPTER XIII.

FEES AND SALARIES.

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| 375. Section Twelve.
376. Clerk of the County Court—
Fees.
377. Clerk of the County Court of
Cook County. | 378. May Appoint an Inheritance
Tax Clerk.
379. Clerk of the County Court—
Fees When the People Insti-
tute the Proceeding. |
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375. Section Twelve. The fees of the Clerk of the County Court in inheritance tax matters in the respective counties of this state, as classified in the Act concerning fees and salaries, shall be as follows:

In counties of the first and second class, for services in all proceedings in each estate before the County Judge the Clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the Clerk shall receive a fee of ten dollars. Such fees shall be paid by the County Treasurer, on the certificate of the County Judge, out of any money in his hands, on account of said tax. In counties of the third class, the Attorney-General of the state may appoint an attorney, who shall be known as the "Inheritance Tax Attorney", and whose salary shall be not to exceed three thousand dollars per year, payable monthly out of the State Treasury upon warrants drawn by the Auditor of Public Accounts, on vouchers approved by the Attorney-General. In counties of the third class, the Clerk of the County Court may appoint a clerk in the office of the Clerk of said Court, to be known as the "Inheritance Tax Clerk", whose compensation shall be fixed by the County Judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the

surplus of such fees over said compensation so fixed to be turned into the County Treasury. In addition to the above, the Clerk of the County Court shall be entitled in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the County Judge to the Supreme Court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the County Court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this act, including certified copies of documents, or records in his office, for which no specific fees are provided, the Clerk of the County Court shall charge against and collect from the person applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which now are or hereafter may be allowed by law to the Recorder of Deeds for recording similar instruments.

376. Clerk of the County Court—Fees.

In first and second class counties the Clerk of the County Court is allowed \$5.00 for each case instituted before the County Judge. All appraisements are instituted before the County Judge, when an Appraiser is appointed on petition or his own motion. The Clerk is entitled to his fee out of any inheritance tax moneys in the hands of the County Treasurer on the certificate of the County Judge. It will be noted that Clerk's fees are not confined to the particular appraisement, as are Appraiser's

fees. In suits under Sections 15 and 16 the fees are the same as now allowed at law in other cases and should be taxed as costs.

In appeals from the County Judge to County Court the fees are the same as now allowed in appeals at law, and should be taxed as costs. The State, however, is not chargeable with costs.

377. Clerk of the County Court of Cook County.

The Clerk of the County Court of Cook County, a third class county, is entitled to withdraw, on certificate of County Judge, from any moneys in the hands of the County Treasurer on account of Inheritance Taxes collected, the sum of \$10.00 for each appraisement case.

378. May Appoint an Inheritance Tax Clerk.

The Clerk of the County Court (Cook County) may appoint one inheritance tax clerk to work in his office, whose compensation shall be fixed by the County Judge, but said salary shall not exceed \$1,500.00 per year, and if the fees earned in Inheritance Tax matters are less than \$1,500.00 per year, the salary of the Inheritance Tax Clerk shall not exceed the fees earned.

It is provided by the law that the fees collected in inheritance tax matters by the Clerk of the County Court, after paying the salary of the Inheritance Tax Clerk shall be turned into the County Treasury.

379. Clerk of the County Court—Fees When the People Institute the Proceeding.

Opinion by the Attorney General of Illinois, 1908, page 264, on proposition of The People paying costs, it was held:

“A justice of the peace cannot recover costs against the People. Therefore he cannot legally demand the payment of such fees in advance.

In 5 Ency. of Pleading & Practice, 151, the principle is stated:

'At common law, the rule was that the king should neither pay or receive costs, as the former was considered his prerogative, and the latter beneath his dignity; and the general terms of statutes giving costs did not include the sovereign. The same principle has been applied in this country to suits, either civil or criminal, in which the Federal or State governments, including municipal corporations when acting as a state agency are parties; and thus they are liable only in the event of express statutory provision, which, however, is now quite general.'

In *Sandberg v. State*, 113 Wis. 598; *U. S. v. Baker*, 2 Wheat. 395; *U. S. v. Ringold*, 8 Peters, 150; *Stanley v. Schwalby*, 162 U. S. 255, the general principle was laid down as follows:

'Nonjudgment for costs can be entered against the State or Government without statutory authority therefor.'

The statutes of Illinois do not impose costs against the People of the State in any case. The statutes authorize the entry of judgment for costs in favor of the People in certain cases. The provision of the statute upon that is contained in Section 17, Chapter 33, Hurd's Revised Statutes, 1905.

This statute has been construed by the Supreme and Appellate Courts of this State under varying circumstances. In *People v. Pierce*, 6 Ill. 553, the Court held, that the State is not obliged to give any bond for costs in any case. Neither does it pay costs except in the particular way pointed out by the statute.

In the case of the *Attorney General v. Illinois Agricultural College*, 85 Ill. 516, the Court held, it was an error to decree that the State shall pay costs in a suit brought in its behalf.'

But should the State be successful in the litigation costs may be taxed and collected from the defendants. (This opinion does not cover the fees payable to the Clerk in inheritance tax appraisements.) See Attorney General Opinions, *post*.

CHAPTER XIV.

MISCONDUCT OF APPRAISER.

380. Section Thirteen. Any appraiser appointed by this Act, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the County Judge shall dismiss him from such service.

CHAPTER XV.

JURISDICTION OF COUNTY COURT.

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| <p>381. Section Fourteen.</p> <p>382. County Court—Jurisdiction.</p> <p>383. County Court — Jurisdiction —
County Judge Acts as Assessor.</p> <p>384. County Judge first Taking Jurisdiction Appraises all Property Regardless of its location.</p> <p>385. County Court—Has Power to issue Commission to Take Deposition in Non-resident</p> | <p>Estate when there is Appraisable Property within the Court's Jurisdiction.</p> <p>386. County Judge—County Wherein Donee of Power was Domiciled Determines Jurisdiction.</p> <p>387. County Judge — Jurisdiction—Non-resident.</p> <p>388. The Jurisdiction—Non-resident Decedent.</p> <p>389. Surrogate Court—will Assume Constitutionality of Statute.</p> |
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381. Section Fourteen. The County Court in the county in which the property is situated of the decedent, who was not a resident of the state or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this Act, and the County Court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

382. County Court—Jurisdiction.

The merits of a suit does not determine jurisdiction, but rather the fundamental power of the Court to entertain the suit. *Dixon v. Russell*, 73 Atl. 51.

383. County Court—Jurisdiction—County Judge Acts as Assessor.

The County Court has jurisdiction to hear and determine all questions relating to the tax. A special system of taxation was created by the enactment of the inheritance tax law with the machinery for assessment.

The County Judge acts as assessor in the first instance and as such considers all questions presented by the Appraiser's report. *Re Sholem*, 238 Ill. 203; *People v. Mills*, 247 Ill. 620; *People v. Moir*, 207 Ill. 180; *Re Wolfe*, 137 N. Y. 205.

384. County Judge First Taking Jurisdiction Appraises All Property Regardless of Its Location.

An appraiser included in his appraisement, property situated in New York City, and also property situated in Brooklyn, two different counties. On a contention by the executor that the property should be appraised in the separate jurisdictions the surrogate *held*: that the surrogate of any county first acquiring jurisdiction, could appraise all property of decedent, regardless of its location. That in case real estate was situated outside of the county wherein the tax appraisement was conducted, that Section 23, Laws of 1885, provided for the issuance of a receipt by the collecting officer in the county where the tax was paid, which receipt may be filed in the counties where the property is situate and thereby evidence payment. *Matter of Keenan*, 5 N. Y. S. 200.

385. County Court—Has Power to Issue Commission to Take Deposition in Nonresident Estate When There Is Appraisable Property Within the Court's Jurisdiction.

In an appraisement of the estate of a nonresident decedent the facts developed that: Decedent prior to death and in contemplation thereof, sold out his business to his partners, the price realized by said decedent being evidenced by a check payable to him which he endorsed and delivered to his wife. She deposited the check with a

Trust Company in New York and the same was thereupon transferred to said Trust Company. Decedent died intestate and at the time of his death, the Trust Company aforesaid has on deposit, approximately \$36,000.00 to the credit of the widow of decedent. *Held*, that the surrogate had power to issue a commission to take the testimony of a nonresident witness relative to the transactions through which the widow received said deposit in order that the surrogate might have before him material evidence as to the taxability of said deposit. *Matter of Wallace*, 71 App. Div. (N. Y.) 284.

386. County Judge—County Wherein Donee of Power was Domiciled Determines Jurisdiction.

Decedent died in 1883, a resident of West Chester County, New York, and by his will bequeathed his widow a life interest in a trust fund created thereunder with power in her to appoint the fund at death. The widow died in 1899, a resident of Erie County, New York, exercising the power. The surrogate of West Chester County appointed an Appraiser, who taxed the fund passing by the power. The appointment of this Appraiser was subsequently vacated on the ground that the surrogate of West Chester had no jurisdiction to make the appointment, but that the surrogate of Erie County, which was the residence of the donee of the power had jurisdiction. *Matter of Seaver*, 63 App. Div. (N. Y.) 283.

387. County Judge—Jurisdiction—Nonresident.

William Hubbard died a resident of Connecticut leaving property within the State of New York. No administration was had in New York, but probate proceedings were initiated and closed in Connecticut and the execu-

tor discharged without payment of inheritance tax on property in New York. *Held*, that such discharge did not prevent the surrogate of New York taking jurisdiction on a petition for an appraisement by the State Comptroller. *Matter of Hubbard*, 21 Misc. Rep. (N. Y.) 566.

388. The Jurisdiction—Nonresident Decedent.

Decedent died a resident of New Jersey, while the New York law of 1885-1887 was in force, owning stock in corporations organized under the laws of the State of New York and deposits in a New York bank. Shortly after the death, this property was removed and transferred to the place of domiciliary administration. *Held*, that the surrogate court had no jurisdiction to appoint an Appraiser to assess a tax. *Matter of Embury*, 19 App. Div. (N. Y.) 214. (See *Beers v. Glynn*, 211 U. S. 477.)

389. Surrogate Court—Will Assume Constitutionality of Statute.

When a law has not been declared unconstitutional by a Court of Review, the Surrogate Court will assume the law is constitutional. *Re Porter*, 124 N. Y. S. 676.

CHAPTER XVI.

COLLECTION OF DELINQUENT TAX.

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| <p>390. Section Fifteen.</p> <p>391. Section Sixteen.</p> <p>392. Enforcement of Collection—Contempt — Executors and Administrators.</p> <p>393. County Court—Can Enforce Payment by Contempt.</p> | <p>394. Delinquents Cannot Object to Correctness of Assessment.</p> <p>395. Executor—Liability Cannot be Determined Under Section Sixteen, Laws of 1885 (N. Y.).</p> |
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390. Section Fifteen. If it shall appear to the County Court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided, or which may hereafter be provided in probate cases in the County Courts in this state, and the fees and costs in such cases shall be the same as in probate cases in the County Courts of this state.

391. Section Sixteen. Whenever it appears that any tax is due and unpaid under this act, and the persons, institutions or corporations liable for said tax have refused or neglected to pay the same, it shall be the duty of the State's Attorney, in counties of the first and second class, and the Inheritance Tax Attorney, in counties of the third class, if he has proper cause to believe a tax is due and unpaid, to prosecute the collection of same in the County Court

in the proper county, in the manner provided in Section Fifteen of this act, for the enforcement and collection of such tax; and in every such case said court shall allow as costs in said case, such fees to said Attorney as the court may deem reasonable.

392. Enforcement of Collection—Contempt—Executors and Administrators.

On March 8th, 1887, the surrogate in an inheritance tax appraisement, fixed a tax under the laws in force 1885. The administrators did not pay the tax assessed and on March 5th, 1888, the District Attorney on behalf of the Comptroller, secured the issuance of a citation to all the persons assessed and liable to pay the tax, as well as to the administrators, citing all to show cause why the tax should not be paid. One of the questions presented was whether the surrogate should order the administrators or other persons liable for the tax to make payment, and upon their refusal to obey the order, to enforce obedience by contempt proceedings. The Court held: "There can be no doubt that under a statute imposing a duty upon the surrogate to assess and fix a tax, that it also gives him the power to enforce its payment by such proceedings as are provided for the enforcement of decrees of his Court. In regard to persons interested in the property, the surrogate can, on the return of an execution, issued upon his decree, enforce the payment (estate of Gilman, 6 Dem. Sur. 358). The administrators also should be included in the order to pay the Comptroller at a time to be fixed, the tax as assessed in the appraisement of March 8th, 1887. No attachment can issue for contempt against the beneficiaries until execution is returned, but as to the administrators, executors and trus-

tees, application for attachment can be made without leave. *Re Prout*, 3 N. Y. S. 831; *Re Vanderbilt*, 10 N. Y. S. 239.

393. County Court—Can Enforce Payment by Contempt.

The Surrogate Court may enforce its order to pay a tax by attachment. *Pelton's estate*, 10 N. Y. S. 643.

394. Delinquents Cannot Object to Correctness of Assessment.

In a suit to collect a tax already assessed, the correctness of assessment cannot be questioned. The correctness of an assessment is reviewable only in the statutory method, viz.: by appeal. *Matter of Hackett*, 14 Misc. Rep. (N. Y.) 282.

395. Executor—Liability Cannot Be Determined Under Section Sixteen, Laws of 1885 (N. Y.).

The County Judge is a taxing officer. He cannot entertain a motion or petition, the object of which is to determine the liability of an executor. *Matter of Farley*, 15 N. Y. St. Rep. 727.

CHAPTER XVII.

INFORMATION TO COUNTY TREASURER.

396. Section Seventeen. The county judge and county clerk of each county shall, every three months, make a statement in writing to the County Treasurer of the county of the property from which, or the party from whom he has reason to believe a tax under this act is due and unpaid.

CHAPTER XVIII.

EXPENSE FOR SERVICE OF SUMMONS.

397. Section Eighteen.

398. Sheriff—Cannot be Reimbursed by State Treasurer.

397. Section Eighteen. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons and taking the proceedings specified in Sections Fifteen and Sixteen of this act, the State Treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

398. Sheriff—Cannot Be Reimbursed by State Treasurer.

The Attorney General of Illinois has held, with reference to this section:

“The word ‘costs’ in the proper and generic sense of the term does not mean expenses and costs are not required to be advanced by the People, nor can costs be recovered against the People. (Attorney General’s Report, 1908, p. 264, opinion rendered November 8th, 1906, to the State’s Attorney of Clinton County, Illinois.) It follows therefore, if costs cannot be taxed against the People, the sheriff cannot demand the payment of his costs in advance. It follows further that if costs cannot be taxed against the People the sheriff cannot be reimbursed from the State Treasury for costs in serving summons, unless Section 18 of the Inheritance Tax Act of 1909 is broad enough to authorize such charge. Section 18 provides as follows:

‘Whenever the County Judge of any County shall certify that there was probable cause for issuing a summons and taking the proceedings speci-

fied in Sections 15 and 16 of this Act, the State Treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.'

In Section 18, therefore, provision is made for the payment to the County Treasurer of 'expenses' and 'disbursements.' I do not understand that in any proper case the word 'expenses' may include costs.

The word 'expenses' means expenditure, outlay or disbursement of money, 12 Am. & Eng. Ency. of Law, 2nd Ed. 394.

I think the word 'expenses' as used in Section 18 is used in its broad and general sense and means the reimbursement for any actual outlay that may have been incurred by the County Treasurer. In the absence, however, of any specific directions that the costs of an officer of the State shall constitute a part of such expenses, and in view of the general principle that costs cannot be taxed against the State it is my opinion that it is the duty of the sheriff to serve the summons without the advancement of any fee therefor by the State. However, if the State should be successful in the litigation, the costs of the proceedings would be taxed against the defendants. Such costs would properly include the fees of the sheriff for serving summons." Attorney General Reports 1910.

CHAPTER XIX.

RECORD KEPT BY COUNTY JUDGE.

399. Section Nineteen. The Treasurer of the state shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the case value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record.

CHAPTER XX.

COUNTY TREASURER.

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| 400. Section Twenty.
401. County Treasurer Must Remit all Inheritance Tax Collections to State Treasurer within Reasonable Time. | 401a. Remittance can be enforced by Mandamus.
401b. Illinois Supreme Court has determined when remittance shall be made. |
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400. Section Twenty. The Treasurer of each county shall collect and pay to the State Treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the auditor of public accounts, on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all said taxes collected by him and not paid to the State Treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent. per annum.

401. County Treasurer Must Remit All Inheritance Tax Collections to State Treasurer Within Reasonable Time.

There is no right in the County Treasurer to retain moneys a greater length of time than is reasonably required for its transmission to the State Treasurer. *People v. Raymond*, 188 Ill. 454.

401a. Remittance Can Be Enforced by Mandamus.

A petition for mandamus by J. S. McCullough, State Auditor, against Samuel B. Raymond, as County Treasurer of Cook County to compel Raymond to turn over

\$68,470.30 collected as inheritance taxes to the State Treasurer. The petition alleged that the time specified for the County Treasurer to report to the State Auditor, viz.: The first Monday of March and September of each year, does not fix the time when remittances shall be made to the State Treasurer, but that all remittances of inheritance tax collections should be made by the County Treasurer immediately on their receipt by him or within a reasonable time thereafter. The Court held:

401b. "By the provisions of Section 6, executors, administrators or trustees are required to take duplicate receipts from the County Treasurer for money paid under the provisions of the act, one of which receipts is required to be forwarded to the State Treasurer, who is required to charge the County Treasurer with the amount in the receipt mentioned. This duty on the part of the executor, administrator or trustee to report to the State Treasurer and to send the duplicate receipt must be done within thirty days after the payment of the money to him. The charge against the County Treasurer is made at once by the State Treasurer. Section 12 (Act of 1895) provides that the County Treasurer shall collect and pay to the State Treasurer all taxes that may be due and payable under the Act, and the State Treasurer is required to give him a receipt therefor. No right or interest exists in the County Treasurer to the money so collected save and except the commissions allowed by law, so that the right to retain the money does not exist in the County Treasurer, but it is his duty to see that it, with reasonable expedition, reaches the official to whom it is to be finally paid. No check on the State Treasurer exists by reason of such payment by the County Treasurer in any of the offices of the State, but it is provided in Section 19 that the County Treasurer shall make a report, under oath, to the Auditor of Public Accounts on the first Mondays of March and September of each year, of the collection and payments of such moneys as may be made under the Act.

This sworn report provided to be filed with the Auditor of Public Accounts is a check which is made on the County Treasurer to enable the auditor to properly keep the accounts of the State. The time at which the affidavit with reference to the collection and payment of moneys provided to be collected under this Act is to be filed with said auditor is not a limitation and has no bearing on the question as to the time during which the money so collected can be retained by the County Treasurer. Having no interest in the funds so collected save his commissions, and owing the duty of seeing that the money shall reach the proper and official custodian with reasonable expedition, there is no right in the County Treasurer to retain moneys a greater length of time than is reasonably required for its transmission to the State Treasurer." *People v. Raymond*, 188 Ill. 454.

CHAPTER XXI.

FEES OF COUNTY TREASURER—DUPLICATE TAX RECEIPTS.

402. Section Twenty-one.
403. Section Twenty-two.

| 404. Who entitled to Receipt-Filing
in different counties.

402. Section Twenty-one. The Treasurer of each county shall be allowed to retain two per cent. on all taxes paid and accounted for by him under this act in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law.

403. Section Twenty-two. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the County Treasurer of any county or the copy of the receipt at his option that may have been given by said Treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in a book to be kept by said clerk for such purpose.

404. Who Entitled to Receipt—Filing in Different Counties.

Any person or body politic is entitled to a copy of an inheritance tax receipt. The apparent object of this Section is to afford any person or body politic an opportunity of obtaining evidence of payment of tax on property in which they are interested or in which they may

desire to acquire an interest in; and further to furnish executors, trustees, heirs and devisees the written evidence of payment of tax by filing for record in the office of the County Clerk of the county wherein the real estate is situate a duplicate receipt, thereby affecting a public record of the payment.

An illustration of the operation of this section would be in the case of a decedent leaving real estate. The appraisement would be had in the county first acquiring jurisdiction and on payment of the tax in that county, filing copies of the receipt, showing payment, in all the counties in which the real property is situate which would effect a record of payment. Copies of receipts can be obtained from the County Treasurer of the county wherein the appraisement was had and filed in all the counties wherein the property is located. (See Keenan's Estate, 5 N. Y. S. 200.)

CHAPTER XXII.

SETTLING QUESTION OF TAXABILITY AND LIEN—STATUTE OF LIMITATIONS.

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| 405. Section Twenty-three. | 409. When State Estopped from Collection. |
| 405a. Section Twenty-four. | 410. Liability of Heir or Beneficiary not Relieved—Lien Lifted from Real Estate. |
| 406. Lien of Tax—When Tax is Postponed lien Continues until Lifted by Payment—Tax is on Succession. | 411. Executors, Administrators, Trustees or Beneficiaries not Relieved by Statute of Limitations. |
| 407. When Tax is "Due and Legally Demandable." | 412. When the Statute is a Bar to Assessment. |
| 408. Tax a Prior Lien to Mortgage. | |

405. Section Twenty-three. When any person interested in any property in this state, which shall have been transferred within the meaning of this act, shall deem the same not subject to any tax under this act, he may file his petition in the County Court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the County Treasurer and all persons known to have or claim any interest in said property shall be made parties. The County Court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidences produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine: but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the County Court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the Supreme

Court of the state by the County Treasurer, or Attorney General of the state, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the County Court.

(See Practice and Procedure.)

405a. Section Twenty-four. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, that said lien shall be limited to the property chargeable therewith: And, provided, further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

406. Lien of Tax—When Tax Is Postponed Lien Continues Until Lifted by Payment—Tax Is on Succession.

“It is to be borne in mind that the tax is levied on the succession and not on the property as such, and the rate and exemptions must be determined by the succession; and it would seem to follow necessarily that when the basis of the tax cannot be fixed, the tax itself cannot be fixed. It is, however, made a lien on the property which will continue until the uncertainties change to certainties, as they will in time, when it may be collected.” *Billings v. People*, 189 Ill. 472-486.

407. When Tax Is “Due and Legally Demandable.”

By Section 3 all taxes are “due and payable at the

death of decedent". *In re Estate of Graves*, 242 Ill. 212 (216), the Court said:

"The Inheritance Tax Law provides that all property so descending, whether under the statute of wills or the statute of descent, shall be subject to tax at certain specified rates, at the fair market value thereof, which shall be due at the date of the death of decedent".

408. Tax a Prior Lien to Mortgage.

"The lien for taxes imposed upon the personal property takes precedence of a prior mortgage on such property, although the statute does not in terms declare that the lien for taxes shall be paramount. (*Minnesota v. Central Trust Co.*, 94 Fed. Rep. 244; 36 C. C. A. 214.)" *Greene's Law of Taxable Transfers*, 2nd Ed. 142.

409. When State Estopped from Collection.

When no proceeding is instituted by the State until forty-two years after the transfer, the State is estopped from proceeding with appraisement and collection of tax. *Stewart's Estate*, 147 Pa. 383.

410. Liability of Heir or Beneficiary Not Relieved —Lien Lifted from Real Estate.

Only the lien on the real estate is lifted, the personal liability of beneficiary is not relieved in Pennsylvania under a statute which reads the same as Section 24, Laws Illinois 1909. *In re Cullen*, 142 Pa. 18, the Court said:

"Peter Cullen died a resident of Pennsylvania, September 5th, 1881, leaving a will whereby he bequeathed his entire estate to Annie E. Costello. The will was contested. Letters *pendente lite* were granted to the Guaranty Trust Company in October, 1881. A will contest was compromised by the parties in interest on July 3rd, 1889, and the will was ad-

mitted in probate and letters of administration granted to the Guaranty Trust Company. On July 5th, 1889, the Registrar of Wills caused an appraisement to be made of the estate of the testator for the assessment of a Collateral Inheritance Tax. Thereupon the administrator and Annie E. Costello, legatee, appealed to the Orphan's Court from the appraisement, filing exceptions, the first of which exceptions specify: "that the Appraiser erred in assessing the tax against the estate, no suit having been brought by the commonwealth of Pennsylvania within five years from September 5th, 1881 (the date of the death of testator) for the amount of said tax as required by the Act of assembly in that case made and provided, to-wit: Section 20 of the Act of May 6th, 1887, whereby said estate is relieved from present liability for said tax."

The Orphan's Court by Justice Ashman in deciding this case, said:

"The main question submitted in this appeal is whether the commonwealth is now barred from collecting the Collateral Inheritance Tax by reason of the lapse of more than five years from the death of the decedent. Cullen died in September, 1881. The will was admitted to probate in 1889. On July 15th, 1889, an Inheritance Tax appraisal was made". Referring to Section 20 of the Act of 1887, he continued—"This Section is the only one in the Act which restricts the right of the commonwealth to sue. As a matter of first impressions and without aid from the light which preceding litigation might cast on its meaning, it would seem that it was intended to quiet the title of purchasers of real estate, by declaring that as to them the tax shall be presumed to be paid and should lose its lien, if suit for its recovery were not begun within the statutory period. This act does not imply—and it certainly does not affirm—that the personal liability shall not continue. On the contrary, even the lien is discharged only when the land has been sold. If there is no purchaser to protect, both the lien and the debt

remain. In any other sense than this, the clause as to purchasers is meaningless; for, if the lien is gone, in all cases after five years, why did the Legislature say that it shall cease as against *them?*"

411. Executors, Administrators, Trustees or Beneficiaries Not Relieved by Statute of Limitations.

Abram R. Strang died a resident of New York in January, 1888, transferring real estate of the aggregate value of \$21,000.00 by his will. No proceeding was instituted by the State until the expiration of six years from the death when an appraisement was had and a tax fixed under the Laws of 1885, as amended in 1887. An appeal was taken on the ground that subdivision 2, Sec. 382, Code of Civil Procedure, fixed a limitation of six years upon an action to recover upon a liability created by statute. The Court held: It is properly urged that the appraisement was to assess and determine the amount of the tax, and is not an action to recover "upon a liability created by statute". That the statute goes merely to the remedy; but it may be assumed that the appraisement is a preliminary step in a proceeding to collect a tax. That if the remedy is barred, the preliminary proceedings fall with it. That the Legislature intended Chapter 737, Laws 1899, providing for the bar to be retroactive, but that so far as beneficiaries and devisees were concerned the liability was not lifted. This statute was intended to lift the lien only from property purchased by innocent buyers for value and can give no rights or exemptions to executors, administrators, trustees or beneficiaries. It was insisted, however, that to reopen a matter which had been judicially determined after the bar of the statute had run, would be unjust; that it would be inequitable to compel executors to make good deficiencies "but the an-

swer to this is simple: executors, administrators and trustees are presumed, like other people, to know the law, and they have no right to permit the property on which the State has a lien to pass out of their possession or control, until that lien has been discharged. The property comes into their possession subject to this lien. It is made their duty to call the attention of the public officials to the fact that they have an estate in their possession and that it is subject to the tax, and until this duty is discharged and the State has been paid this tax, there is no one who can give a good title to the property, and this much of the law is known to the beneficiaries and to all persons interested so that there can be no such thing as a vested interest in the estate, no matter how completely it may have been distributed". *Matter of Strang*, 117 App. Div. (N. Y.) 796-799.

412. When the Statute Is a Bar to Assessment.

In an action brought in the County Court of Hawkins County, Tennessee, to recover an inheritance tax, on appeal from the Order Fixing Tax, the question arose whether Section 19 of the Inheritance Tax Law (1893) was a complete bar to the State from a recovery of the tax, the death of the decedent out of whose estate the tax arose having occurred more than five years prior to date of the commencement of said proceeding. Said Section 19, reads as follows:

"The lien of the Collateral Inheritance (tax) shall continue until the tax is settled and satisfied; provided that the said lien shall be limited to the property chargeable therewith; and provided further that all Collateral Inheritance Tax(es) shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate".

The Court held:

"It is insisted for the State that the last clause so confines the limitation as to admit of its application only to purchasers of real estate from the person liable for the tax. We are of the opinion, however, that this is too narrow a construction, and that the purpose of the Legislature, on the contrary, was to establish a general limitation of five years in this class of cases. The language used is very broad: 'All collateral inheritance taxes shall be sued for within five years after they are due and demandable, otherwise they shall be presumed to have been paid'. The subsequent clause referring to the lien which is a mere incident of the tax, could not be properly construed to cut down this broad language. We are of the opinion, therefore, that his honor, the circuit judge, committed error in refusing to sustain the plea interposing this special five years' limitation". *Miller v. Wolfe*, 115 Tenn. 234.

CHAPTER XXIII.

TAX PRESENTLY PAYABLE—REFUND ON SUBSEQUENT DEVOLUTION.

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| <p>413. Section Twenty-five.</p> <p>414. Vested Remainder—what Constitutes.</p> <p>415. Contingent Interests — when not taxable.</p> <p>416. Origin of Section Twenty-five.</p> <p>417. Remainders — Contingent or Defeasible Interests are Presently Taxable and Tax is Forthwith Payable out of Trust Fund—Constitutionality Discussed.</p> <p>418. Contingent Interests Assessed at Highest Rate and Taxed.</p> <p>419. Tax—When Payment Diminishes Corpus of Trust—not Ground for Objection.</p> <p>420. Payment of Tax on Annuities out of Residuum—Amount Paid is Returnable by Deducting from Annuity.</p> <p>421. Payment of Tax—By whom and from what Property Payable.</p> | <p>422. Payment of Tax—When Payable from Income.</p> <p>423. Contingent Estates—Review of Law Relative to Taxation Thereof.</p> <p>424. Remainders Vesting under Prior Enactment Not Affected by Subsequent Law Taxing at full value.</p> <p>425. Values on Prior Appraisement not Determinative of Subsequently vesting estates—no Diminution Allowed on Account of Prior Valuation of Life Estates.</p> <p>426. Remainder—Effect of Prior Valuation on Section Appraisement of Property Postponed for Taxation.</p> <p>427. When Contingent or Vested Remainder not Presently Taxable.</p> <p>428. Estates Appraised in Illinois after July 1, 1909.</p> |
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413. Section Twenty-five. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred: Provided, however, that on the happening of any contingency

whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this state, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under Section Eight.

Estates or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or account of any valuation theretofore made of the particular estates for the purpose of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

414. Vested Remainder—What Constitutes.

The will of a decedent who died a resident of the State of Illinois in 1904, provided as follows:

“It is my will that all of the foregoing legacies and

bequests be paid out of money collected from my life insurance policies * * * and all the rest, residue and remainder of my estate * * * I hereby will, devise and bequeath to my executors and trustees in trust and intact, and that the business of Kingman & Co. and branch houses and other corporations therewith connected shall be continued as nearly as possible along the lines which they have been conducted. * * * But it is my desire that the estate shall be continued as a whole for a period of ten years, whereupon all of said estate shall be divided and one-third of which is to be paid to my wife to be hers absolutely forever, and two-ninths of which shall then become the property of each of by three children and their several heirs, first reserving a sufficient sum to carry out said bequests that may not have matured."

It was contended that the terms of this portion of the will prevented the residuary estate from vesting in possession for a period of ten years, and that therefore no tax could be imposed until the estate came into actual possession of the beneficiaries. The Court held the will created a vested estate and the property was taxable as of the time of decedent's death. *Re Kingman*, 220 Ill. 563.

415. Contingent Interests—When Not Taxable.

Under the Act of 1895, transfers or successions limited in trust or otherwise, wherein the transferees or beneficiaries are dependent upon contingencies or where the interests or remainders are vested but defeasible, the property limited is appraisable, but the tax on all contingent and defeasible estates and interests cannot be fixed until the uncertainty is removed and the estate or interest becomes absolute. *Billings v. The People*, 189 Ill. 472; *People v. McCormick*, 208 Ill. 437.

416. Origin of Section Twenty-five.

By the first paragraph of Section 25 of the Law of 1909 it is provided that a tax shall be due and payable forthwith on all transfers of property limited upon contingencies or conditions. This is taken from the Transfer Tax Law of New York in force March 14th, 1899.

The second paragraph of Section 25 is taken from the Transfer Tax Law of New York, Chapter 284, Laws 1897, in force April 16th, of that year. See McElroy on the Transfer Tax Law (N. Y.), 2nd Ed. 392. According to McElroy this second paragraph was "doubtless inadvertently omitted from the Transfer Tax Law of New York, in force March 14th, 1899, and was re-enacted by Chapter 173, 1901."

The third paragraph of Section 25 was taken from the Transfer Tax Law of New York, in force June 15th, 1896, and omitted from the Transfer Tax Law of 1897, and again re-enacted in Section 230, Transfer Tax Law, 1901. McElroy on the Transfer Tax Law (N. Y.), 2nd Ed. 393.

"The re-enactment of said paragraph in the New York Transfer Tax Law of 1901 was evidently caused by a decision of the Court of Appeals of New York in *Matter of Sloane*, 154 N. Y. 109." McElroy on the Transfer Tax Law (N. Y.), 2nd Ed. 393.

417. Remainders—Contingent or Defeasible Interests Are Presently Taxable and Tax Is Forthwith Payable Out of Trust Fund—Constitutionality Discussed.

"Prior to an amendment of 1899 the Transfer Tax Law (L. 1896, ch. 908, sec. 230, as amended L. 1897, ch. 284), provided that 'estates in expectancy which are contingent or defeasible shall be appraised at their full, undiminished value when the persons en-

titled thereto shall come into the beneficial enjoyment or possession thereof. * * *, Under this statute it has been repeatedly held that future contingent estates were not taxable until they vested in possession and the beneficial owner could be ascertained. The question now presented is as to whether this statute has been changed. The Legislature, by chapter 76 of the Laws of 1899, amended Section 230 of the Tax Laws, known as chapter 908 of the Laws of 1896, by which the provision of the statute quoted is omitted and in place thereof we have the following: 'Whenever a transfer of property is made, upon which there is, or in any contingency there may be a tax imposed, such property shall be appraised at its clear market value immediately upon such transfer, or as soon thereafter as practicable.' Then follow provisions particularly specifying the manner in which the value of future or limited estates shall be determined. Then it is provided that 'When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith, out of the property transferred.'

"It seems to me clear that the Legislature by this amendment intended to change the law upon the subject and to make the transfer tax, upon property transferred in trust payable forthwith. The tax is not required to be paid by the constitutional transferee, for, by the provisions of the statute it is to be paid 'out of the property transferred.' So that whoever may ultimately take the property takes that which remains after the payment of the tax. This amendment makes provision for property transferred in trust. It, therefore contemplates defeasible transfers as well as absolute transfers." *Matter of Vanderbilt*, 172 N. Y. 69. Also see *Matter of Brez*, 172 N. Y. 609, reversing 69 App. Div. (N. Y.) 619.

418. Contingent Interests Assessed at Highest Rate and Taxed.

"George H. Byrd, a resident of New York, died testate, leaving \$74,071.54 of personal property subject to the Inheritance Tax Law of this State. The present appeal is prosecuted by the executors of the last will of the testator from an order of the County Court finding that \$15,590.68 of said estate was liable to an Inheritance Tax of \$155.91.

The State, by the Attorney-General, has assigned cross errors which raise the question whether the Court did not err in refusing to hold that the amount of the Inheritance Tax should be \$355.91, instead of the amount fixed by the Court.

The questions at issue arise out of the following facts. The fourth clause of the testator's will is as follows:

Fourth: 'If my wife, Lucy Carter Byrd, survives me, I give, devise and bequeath all the rest, residue and remainder of my estate, real and personal and wheresoever situated, unto her during her life, and upon her death to my children, Anne Harrison Byrd, Lucy Carter Byrd, William Byrd and Francis Otway Byrd, share and share alike, and if either of my said children, Anne, Lucy, William or Francis, die leaving issue, either before me or before my said wife, then the issue of the child so dying shall take the share which his, her or their parent would have taken if living at her death.'

It is admitted that the sum of \$74,071.54 of the testator's personal estate was disposed of under the foregoing clause of his will. The widow's estate was appraised at \$18,480.86, which, under the statute, was exempt from any inheritance tax. Deducting the value of the widow's life estate from the total leaves \$55,590.68, which passes as a remainder under the fourth clause of the will above quoted. Appellants contend that the residue passed as a vested remainder to the four children named by the testator share and share alike, and that since each share, when thus divided, is less than \$20,000 there is nothing left subject to an inheritance tax. Appellee contends that it

was the intention of the testator to keep his estate intact until the death of his widow, and that at that time it should vest in such of the children named as might survive the widow and the issue, if any, of such of the children named as might die before the widow. In other words, the People contend that the remainder was devised to the children who might survive the widow as one class and to the issue of such as might predecease her as another class, and that such remainder was therefore contingent. If appellants' contention be sustained, it follows that the court erred in holding that any part of said estate was subject to an Inheritance tax. If appellee's contention be sustained, then it is conceded that some amount of Inheritance Tax is due.

The principal controversy between the parties relates to the construction to be given to the fourth clause of the testator's will. The testator being a resident of the State of New York, his will, so far as it affects personal property, is to be construed by the law of New York. Upon this question both parties agree. The only rule of law relating to the construction of wills that will be necessary to refer to is that general and well-established rule that, in construing a will the intention of the testator, as expressed by him, should be given effect, unless to do so would violate some established principle of law or rule of public policy. This is the same in New York as it is in Illinois. (*Weeks v. Corwell*, 104 N. Y. 325; *Robinson v. Martin*, 200 *id.* 159.) In the case last above cited the Supreme Court of New York said: 'Precedents and rules frequently have but slight value in interpreting wills, for those instruments are rarely, and in the nature of things are not likely to be, similar in terms. When the testator's intention is obscure resort to them may be helpful in ascertaining it: Where, upon inspection of the will and upon a consideration of relevant facts and circumstances, an intent is apparent, all rules to the contrary must yield, provided that an intent does not offend against public policy or some positive rule of law. It may well be said that some of the rules of construction require a greater force of intention to control them,

but if it be found in the instrument it should be allowed.' * * *

Guided by this general rule we think that the intention of the testator is so clearly expressed in the fourth clause of his will that it is possible to understand it without resorting to technical rules of construction. The first sentence in clause four clearly gives the testator's wife a life estate in all of the remainder of the estate, both real and personal, wherever situated. After devising the life estate to his wife, the testator proceeds as follows: 'And upon her death to my children (naming them), share and share alike.'

If the clause had ended here there would be much force in appellants' contention that the remainder was vested, and that the words 'upon her death' merely refer to the time when the devisees named were to come into the enjoyment of the estate; but we think that the intention to postpone the vesting as well as the enjoyment of the estate is clearly made to appear by what follows in said clause. The clause in question contains the following additional language: 'And if either of my said children, Anne, Lucy, William or Francis, die leaving issue, either before me or before my said wife then the issue of the child so dying shall take the share which his, her or their parent would have taken *if living at her death.*' The words '*if living at her death*' clearly indicate that a child must be living at her death—that is, the death of the widow—in order to take under the will. If, as appellants contend, the estate vested in the children at the death of the testator, manifestly they would not take at the death of the widow. If the testator intended that each of his children should take a vested interest at the time of his death, and wanted to provide for the children of any that might die before the estate vested, he would naturally and reasonably have used the words 'which his, her or their parent would have taken *if living at my death,*' but he uses the words '*if living at her death,*' referring to the death of his wife. This conclusion seems more reasonable when the fifth clause of the will is read. * * *

Had the widow not survived the testator the property in question would have passed, upon the testator's death, under the fifth clause. There the intention to vest the property at the time of the testator's death in the event the wife did not survive him is made very clear. Reading these two clauses together, we are forced to the conclusion that the testator used the words in the fourth clause, 'if living at her death,' advisedly, and that thereby clearly intended that the estate should not vest in the remaindermen until the death of his widow. In our opinion, the remainder to the children was contingent.

The Court did not err in holding that there was a liability here under the Inheritance Tax Act but it did err in fixing the amount of said tax. In determining the amount of Inheritance Tax under the Inheritance Tax Law, the Court should take the highest amount that in any contingency would become liable to the tax. A possible contingency here is that three of the four devisees named may die before the widow, leaving no issue. In that contingency the one survivor would receive all of the estate, for the reason such one would be the only representative of the class living at the time the estate vests. The court below did not adopt this rule, but supposed the possible contingency that two of the children named should die without issue before the widow, leaving two survivors of the class to take the estate. The court then divided the devise equally between the two supposed survivors and deducted \$20,000 from each share to arrive at the amount of the tax due. Under the rule requiring the court to adopt the highest amount that in any contingency can pass, the amount here was subject to only one deduction of \$20,000. No case involving the construction of the Inheritance Tax Law in this regard has heretofore come before this court, but our statute in this respect is identical with the statute of New York. Section 25 of the New York statute has been construed by the Court of Appeals of New York in accordance with these views. (*Re Vanderbilt*, 172 N. Y. 69; *Re Brez*, 172 N. Y. 609.)

The judgment of the County Court of Cook County is reversed on the cross-errors and the cause remanded to that court, with directions to enter judgment for \$355.91, which is the correct amount of Inheritance Tax due."

Byrd v. People, 253 Ill. 223. (Adv. sheets.)

419. Tax—When Payment Diminishes Corpus of Trust—Not Ground for Objection.

"Both the life tenant and remainderman took their respective interests in the property, as a matter of sovereign power. Neither is the life tenant in a position to complain that the principal of which she is entitled to the use is diminished by the tax, nor can the remainderman resist the imposition of the tax upon the ground that he may never come into possession of the property." *Matter of Bushnell*, 73 App. Div. (N. Y.) 325.

420. Payment of Tax on Annuities Out of Residuum—Amount Paid Is Returnable by Deducting from Annuity.

The payment of Inheritance Taxes fixed upon the present value of an annuity is payable out of the corpus of the fund limited to support such annuity, and

"The method of returning to the residuary estate the tax so paid by the trustees is as follows: Take for illustration an annuitant whose probable duration of life is ten years. The trustees would deduct from each annual payment as made one-tenth of the tax and restore it to the residuary estate.

In the case at bar the death of the annuitant was suggested on the argument as having taken place since that of the testator. Any portion of the transfer tax not restored to the estate by the process indicated, at the time of the annuitant's death would be a loss which the residuary estate must sustain." *Matter of Tracy*, 179 N. Y. 501.

421. Payment of Tax—By Whom and from What Property Payable.

Section 25 of the Laws of 1909 (Illinois) provides that the tax "shall be due and payable forthwith by the executors or trustees out of the property transferred." In interpreting a similar section of the New York Law, the Court of Appeals held:

"It thus appears that whenever a transfer of property is made, upon which there is, or, by any contingency there may be a tax imposed, the property is to be properly appraised at its clear market value, and the transfer tax is due and payable forthwith out of the property transferred. In *Matter of Vanderbilt*, 172 N. Y. 69, this Court construed Section 230 of the Transfer Tax Law (N. Y.) as affecting the payment of tax upon contingent remainders and held that the tax was payable forthwith out of the property transferred. Judge HAIGHT, writing for the Court, said:

It seems to me clear that the Legislature by this amendment intended to change the law upon the subject and to make the transfer tax upon the property transferred in trust, payable forthwith. The tax is not required to be paid by the conditional transferee, for, by the provision of the statute it is to be paid out of the property transferred.'

So that whoever may ultimately take the property takes that which remains after the payment of the tax." *Matter of Tracy*, 179 N. Y. 501-509.

422. Payment of Tax—When Payable from Income.

See in *Re Hoyt*, 76 N. Y. S. 504.

423. Contingent Estates—Review of Law Relative to Taxation Thereof.

In the appeal from an appraisement of the estate of George N. Kennedy, deceased, who died September 7th,

1901, a resident of New York, the question arose whether future contingent estates were presently taxable. The Court said:

"The surrogate at first held the interests taxable presently, but on appeal reversed himself, and held they were not taxable until possession thereof was secured by the persons interested therein. This latter decision was based upon a construction of the statute which we regard as erroneous. Prior to 1899, Section 230 of the Tax Law (Ch. 908, p. 795, Laws 1896) as amended by Ch. 284, p. 150, Laws 1897, provided:

'Estates in expectancy which are contingent or defeasible shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, etc.'

Under this provision of the statute it was repeatedly held that future contingent estates were not taxable until they vested in possession and the beneficial owner could be ascertained. *Matter of Vanderbilt's Estate*, 172 N. Y. 69; 64 N. E. 782. This section was amended by Chapter 76, p. 100, Laws 1899, and the provision above quoted was omitted, and in place thereof the following provision was inserted:

'Whenever a transfer of property is made, upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon such transfer, or as soon thereafter as practicable * * *. When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith, out of the property transferred.'

And it was held by this amendment that a change

was intended making contingent estates taxable forthwith. *Matter of Vanderbilt's Estate, supra.* In 1901 this section was again amended (Chapters 173, 493, pp. 380, 1226, Laws 1901), by inserting therein after the provisions last above quoted the following:

'Estates in expectancy which are contingent or defeasible (and in which proceedings for the determination of the tax have not been held in abeyance), shall be appraised at their full undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, etc.'

The controversy is as to the construction of this provision in the amendment of 1901. It will be observed that the language, except that which we have included in brackets, is the same as the clause above quoted from the amendment of 1897, which was omitted entirely in the amendment of 1899. This language in the amendment of 1901 does not apply to all estates of the kind named, but is limited by the language in brackets to those in which proceedings to tax had not been commenced or the taxation had been held in abeyance. The surrogate construed the first clause in this limitation as covering all such estates transferred after the amendment of 1901 went into effect, and therefore as covering the estates herein. If this were the intention of the Legislature the language inserted in the amendment of 1899, making such estates presently taxable, would not have been retained in the amendment of 1901. There would have been no occasion for it. By the amendment of 1897, these estates were not taxable presently, but the taxation thereof was held in abeyance. By the amendment of 1899 the language of the amendment of 1897 referred to was omitted, and the provision expressly made for taxation presently. The intention of the Legislature was thus made clear and certain to change from a future to a present taxation in all cases of such estates. Then by the amendment of 1901 this language of the amendment of 1899 was retained, showing the general legislative intent remained the same, and the language here in

question was inserted, providing that in certain specified cases a future taxation was intended as under the amendment of 1897. It is apparent that the cases so intended to be provided for were limited in number, and not all the cases thereafter occurring.

We think this provision was intended to apply only to those cases unprovided for by the statute of 1899, and left so until 1901, where the transfers had occurred prior to 1899, and there had, under the amendment of 1897, been no proceedings taken to impose the tax; the taxation had been held in abeyance until the future time, when the tax should be assessed under the amendment of 1897. In view of the amendment of 1899 omitting the provision as to future assessments contained in the amendment of 1897, these cases were covered by no provision of the statute, and hence this one was inserted in the amendment of 1901 to provide therefor. We do not think the Legislature intended to change the general policy of present, instead of future, assessments of estates of this nature which was clearly indicated in the amendment of 1899, and which was retained in the amendment of 1901." *Miller v. Tracy et al.*, 86 N. Y. S. 1024; 93 App. Div. (N. Y.) 27.

424. Remainders Vesting Under Prior Enactment Not Affected by Subsequent Law Taxing at Full Value.

Decedent died testate in 1887 and by his will provided:

"To my brother, Louis Meyer, of Cleveland, Ohio, and to members of his family I give the income of \$40,000.00 during his life, the principal of this legacy to be set apart and invested by my executors, and held by them in trust and the income thereof paid to my said brother, or to his family, at the discretion of said executors, at convenient intervals. If the income is insufficient, then to take from the principal, and etc., at the death of my said brother, such of the principal as remains unexpended, shall go to and be equally divided among his issue, *per stirpes*."

Louis Meyer survived and died May 13th, 1902, leaving issue. In an appraisement of the estate of William Meyer, under the Law of 1885 as amended in 1887, the Appraiser reported that no appraisement could be made of the bequest of \$40,000.00 as it cannot be determined what property will pass to the issue of Louis Meyer. This report was confirmed by the surrogate and no tax was imposed upon the transfer of this bequest. On the death of said Louis Meyer, as aforesaid, another Appraiser was appointed and from the testimony before said last Appraiser, it appeared that this fund of \$40,000.00 was retained by the executors in trust for Louis Meyer; that the total income of said trust fund was paid by the executors to Louis Meyer and there was also paid to him out of the principal, in pursuance of the discretion vested in the trustees, the sum of \$14,000.00. That there was in the hands of the surviving trustee, upon the death of Louis Meyer, \$30,900.00 in cash, which was payable to the remaindermen, referred to in the will of William Meyer. The last Appraiser appraised the property in the hands of the trustee as of May 13, 1902, the date of death of Louis Meyer.

It was insisted by the trustees that the property was to be valued as of the time of the death of William Meyer and should be taxed as of that time. The Court held that the remainder vested in said remaindermen as of the time of the death of William Meyer. That according to the language of the will it could not be definitely determined to whom the property went until the death of the life tenant, Louis Meyer. That the trust fund, subject to its depletion vested absolutely in the beneficiaries upon the death of William Meyer. That whatever rights the children of Louis Meyer acquired

they acquired at the death of the original testator and that it was this right of succession that was taxable under the statute of 1885 as amended in 1887. Section 230, Tax Law 1896, Ch. 908, as amended by L. 1902, Ch. 496, provides:

“Estates in expectancy which are defeasible and in which proceedings for the determination of the tax have not been taken, or where the taxation thereof has been held in abeyance, shall be appraised at their full undiminished value, when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation, etc.”

The Court held that this provision is not made to apply to a remainder which had vested prior to the passage of the Act and that it is a universal principle that a retroactive effect will not be given to a law unless such intention is plainly expressed therein. That when the remainder vested a specific tax was assessable upon the transfer to these beneficiaries. Surrogate reversed. *Matter of Meyer*, 83 App. Div. (N. Y.) 381.

425. Values on Prior Appraisement Not Determinative of Subsequently Vesting Estates —No Diminution Allowed on Account of Prior Valuation of Life Estates.

“Joseph Naylor died testate June 7, 1897, domiciled in the State of New York, and by his will devised real estate in trust for the benefit of his wife during her life and directed upon her death ‘to hold such real estate upon seven separate trusts for the benefit of his seven nephews and nieces respectively, paying to each the net income of one equal one-seventh during his or her life, with remainder in each case to his or her surviving lineal descendants.’

An Appraiser was appointed to fix the transfer tax and reported the net value of real estate passing under the will to be \$271,000.00. This he (appraiser) divided into seven equal parts, one for each of the life tenants, and fixed the cash value of the life estate, as well as the remainder in each case. The value of the life estate of Sarah Morgan Mason (one of the nieces) was fixed at \$15,306.00, and the tax imposed thereon was \$765.35. The value of the remainder limited upon her life was fixed (by appraiser) at \$22,316.00, but no tax was imposed thereon because, according to his (appraiser) report it could not then be definitely determined to whom such remainder would ultimately descend. This report was confirmed by the surrogate and no appeal was taken therefrom. Said Sarah Morgan Mason died November 27th, 1905, leaving Walter R. Mason and Edgar F. Mason, her sons and only surviving descendants. 'They each, under the will of Joseph Naylor, became entitled to one-half of the one-seventh given to their mother for life. Shortly after the mother's death they applied to the surrogate for an order fixing the amount of the transfer (inheritance) tax upon the remainder limited upon the life of their mother and which (said remainder) had previously been valued by the Appraiser at \$22,316.00. The statute in force at the time of Naylor's death and under which the transfer tax had to be determined was Ch. 287, L. 1897.'

A question arose whether the value of the remainder as fixed in the original appraisement at \$22,316.00 should be the value for taxation passing to Walter R. and Edgar F. Mason, sons. The surrogate held that the value of \$22,316.00 was not the basis of taxation, but held that the value of the real estate passing in enjoyment to said Walter R. Mason and Edgar F. Mason should be determined at the time of the passing and should not be diminished by the value of the estate of their mother, first above fixed and taxed. The Court, in rendering its decision quotes Tax Law N. Y. 1896, Ch. 908, Sec. 230, as amd. by L. 1897, Ch. 284, which provides—

'Estates in expectancy which are contingent or defeasible, shall be appraised at their full undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for, or on account of, any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.'

It was contended by said remaindermen on appeal to the Surrogate Court that the first appraisement was *res adjudicata* of the question of taxation and valuation of the property passing by the will of said Naylor. That an error of law was committed in the original appraisement which could only be corrected by appeal and that no appeal was taken by the State, and therefore said State is in no position to assert that the order was erroneous. The Court held, that the value of the estate passing to the remaindermen was not before the first Appraiser. That there was no necessity for, and he had no authority to pass upon that question. (*Matter of Earle*, 74 App. Div. (N. Y.) 458; *Matter of Goelet's Estate*, 78 N. Y. S. 47.) That a judicial determination, whether it be judgment, order or decree, is conclusive only in respect to the grounds covered by it and the necessary facts passed upon to uphold it, although it, in express terms, purports to determine a particular fact, yet if such fact were immaterial, the judgment, order or decree will not conclude the parties in reference thereto. That it is only material, relevant and necessary facts decided which are finally and conclusively determined. (*Stokes v. Foote*, 172 N. Y. 327; *House v. Lockwood*, 137 N. Y. 259; *Springer v. Bien*, 128 N. Y. 99; *Campbell v. Gonsalus*, 25 N. Y. 613, etc.).

The Court further held that the fact that the Appraiser undertook to determine the value of the estate which would ultimately pass to the remaindermen, did not bind them because they were not represented, and if it did not bind them it cannot be claimed that it bound the State.

In this case the remaindermen had no notice of

the appraisement. A tax was assessed upon the full value of the real estate passing to Walter R. and Edgar F. Mason without diminution of the life estate. *Matter of Mason*, 120 App. Div. (N. Y.) 738."

426. Remainder—Effect of Prior Valuation on Second Appraisal of Property Postponed for Taxation.

A testator died in August, 1897, leaving a will, by which he gave one-half of his residuary estate in trust for the benefit of his son Robert, directing his executor to pay to said son upon attaining majority, his share in the residuary estate. In a proceeding theretofore had for the purpose of assessing the transfer tax, the Appraiser determined the present value of the use of the fund of \$500,000.00 for the period intervening between the death of the testator and his majority. In the Appraiser's report the value of the remainder interest, as shown by the certificate of the insurance department, which was attached to said report, was \$399,675.00. The Appraiser reported that the said remainder, as well as other interests of a similar character passing by the will, were not then taxable, as it was not then ascertainable to whom said interests would finally pass. An order was entered on such report, fixing the tax, and providing "that the matter of fixing the tax, on the interests or shares in remainder passing under said will which may be subject to taxation under the said Act, be, and the same is hereby, reserved until it is ascertainable to whom the interests of shares in remainder will finally pass. The legatee attained the age of 21 years in January, 1901, when the said sum of \$500,000.00 became payable, as directed by the will. The executors ask that the Court make an order fixing the tax upon the interest in re-

mainder in said sum at the value ascertained by the Appraiser, as above stated. An order was submitted which assesses the tax upon the value of the remainder interest as fixed by the Appraiser's report.

By the laws in existence at the date of death of the decedent (Section 230, C. 908, L. 1896, as amd. by Ch. 284, L. 1897, estates in expectancy, which are contingent or defeasible shall be appraised at their full, undiminished value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. Chap. 76 of the Laws of 1899, which became a law March 14th of that year, in amending Section 230, omitted the clause quoted, and provided for the immediate assessment and payment of the tax upon contingent interests.

The value of the estate now transferred by the executor to the legatee must be assessed at the value of the principal fund, undiminished by the value of the estate during the minority of the legatee, heretofore assessed for the purpose of taxation. *Re Goelet's Estate*, 78 N. Y. S. 47.

427. When Contingent or Vested Remainder Not Presently Taxable.

It has been held in *Matter of Babcock*, 37 Misc. Rep. (N. Y.) 445; 75 N. Y. S. 926, and affirmed in 81 App. Div. (N. Y.) 645, 81 N. Y. S. 1117, that a limitation giving a life tenant the right to use a part or all of the principal is not taxable until the death of the tenant.

428. Estates Appraised in Illinois After July 1, 1909.

A decedent who died prior to July 1st, 1909, and on or after July 1st, 1895, transferring property within the jurisdiction of the State of Illinois, but first appraised after July 1st, 1909, is taxable at the rates and entitled to exemptions as provided by the law of 1895. *Matter of Davis*, 149 N. Y. 539. But the procedure in the appraisal proceeding is governed by the law in force at the time of appraisement. *Matter of Sloane*, 154 N. Y. 109.

CHAPTER XXIV.

COMPROMISE OF TAX.

429. Section Twenty-six. The State Treasurer, by and with the consent of the Attorney General expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstances that the taxes therein were held not presently payable or where the interests of the legatees or devisees were not ascertainable, or where the interests of the legatees or devisees were not ascertainable under an act to tax gifts, legacies, and inheritances, etc., in force July 1, 1885 (1895) and amendments thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition: Provided, however, that no such composition shall be conclusive, in favor of said trustees as against the interests of such cestuis que trust as may possess either present rights of enjoyment or fixed absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the State Treasurer, one copy in the office of the clerk of the County Court wherein the appraisement was had or the tax was paid,

and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

429a. Clerical Error.

The reference to "An Act to Tax Gifts, Legacies, and Inheritances, etc., in force July 1, 1885" is a clerical error. The Act referred to is the Inheritance Tax Law of 1895.

No questions have arisen under this Section which have been considered or reviewed by a Court. (The form composition agreement used in settlements of tax under this Section is found under "Forms").

CHAPTER XXV.

SPECIAL GUARDIAN.

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| 430. Section Twenty-seven.
431. Special Guardian—when Un- | 432. Special Guardian—when Nec-
essary. |
| necessary. | |

430. Section Twenty-seven. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability.

431. Special Guardian—When Unnecessary.

When the law fails to provide for the representation of minors by special guardian, the surrogate's order cannot be attacked on the ground that minors were not before the court, and if such minors were in any way before the court, their interests were comprehended in the appraisement. *Matter of Jones*, 54 Misc. Rep. (N. Y.) 202. *Matter of Post*, 5 App. Div. (N. Y.) 113.

432. Special Guardian—When Necessary.

When an appraisement involves the interest of minors to the extent that their rights may be affected, such minors should be represented by special guardians. *Re Gould's Estate*, 48 N. Y. S. 872.

CHAPTER XXVI.

EXCEPTION OF RELIGIOUS, EDUCATIONAL, CHARITABLE AND BENEVOLENT BEQUESTS.

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| <p>433. Section Twenty-eight.</p> <p>434. Exemptions to Religious, Educational and Benevolent Institutions — Amendment of 1901—Illinois.</p> <p>435. Foreign Educational Corporation Taxable — Amendment 1901 Constitutional.</p> <p>436. Charity—Definition.</p> <p>437. Public Charity—Statute of a Horse with Drinking Fountain.</p> <p>438. Religious Corporation — when Organized under Laws of Foreign State.</p> <p>439. Foreign Corporations—United States a Foreign Corporation—is taxable as a Beneficiary.</p> <p>440. Foreign Religious and Charitable Corporations—Fact of Holding Property in Taxing State Immaterial.</p> | <p>441. Exemptions — Foreign Charity with Branch in Taxing State.</p> <p>442. Charitable Bequests — When Bequest to Local Branch of a Foreign Corporation is Exempt.</p> <p>443. Charitable Bequests—Law Construed to Favor Exemption.</p> <p>444. Educational in Part—When one of the Purposes of Corporation is Educational.</p> <p>445. Exemption—Municipal Corporation not Exempt.</p> <p>446. Bequest for saying Mass is a Charitable Bequest and Exempt from Taxation.</p> <p>447. Foreign Corporation—Property Within the Taxing State.</p> <p>448. Young Men's Christian Association—when Exempt.</p> |
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433. Section Twenty-eight. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

434. Exemptions to Religious, Educational and Benevolent Institutions—Amendment of 1901—Illinois.

One Caldwell died June 7th, A. D. 1901, a resident of the State of Illinois, and by his will limited his residuary estate to the Provident Hospital of Chicago, Illinois. On May 10th, A. D. 1901, prior to the death, the amendment to the Inheritance Tax Law of 1895 was approved. On July 1st, A. D. 1901, said amendment, allowing exemptions to charitable, religious, educational and benevolent institutions went into effect. It was contended that the amendment precluded the County Judge from entertaining proceedings for the collection of a tax upon the property passing to the Provident Hospital, on the ground that the appraisement was not instituted until after the amendment took effect. The Court held:

“It is not denied that upon the death of Dr. Caldwell, June 7th, A. D. 1901, the property bequeathed became immediately impressed with the liability to tax under the Act of 1895, but it is said that on the first day of July, the property came under the operation of this amendment which declares it shall not be subject to any such duty or tax. This position however plausible is, we think, unsound. By the provisions of the original Act the tax in question became due and payable at the death of the testator and was a lien upon the property bequeathed to appellant from that date. The right of the State to collect it was then complete. The amendment has no retroactive effect.” *Provident Hospital v. People*, 198 Ill. 495.

435. Foreign Educational Corporation Taxable—Amendment 1901 Constitutional.

The Supreme Court of Illinois in considering the taxability of a foreign educational corporation, said:

“Fannie Speed, deceased, late a citizen and resident of the State of Kentucky, by her last will and

testament devised certain real estate in the City of Chicago to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, a corporation organized and existing by virtue of the laws of the State of Kentucky, with power to form an educational fund, to be styled the 'Centenary Educational Fund' for the promotion of literature, education, art, morality and religion within the bounds of said conference, to be held and used exclusively for education and religious purposes in the State of Kentucky, and it was stipulated that said corporation is not permitted to make dividends or distribution of profits or assets among its members or stockholders, and that said corporation does not have or maintain an office in the State of Illinois or engage in educational or religious work therein. The County Court of Cook County ruled that under the provisions of 'An Act to Tax Gifts, Legacies and Inheritances in certain cases, and to provide for the collection of same', approved June 15, 1895, and the act amendatory thereof approved May 10, 1901, said Board of Education was liable to pay the sum of \$6,280.50 as a succession or inheritance tax on the right to take the property under said devise. This appeal questions the correctness of that ruling.

The amendatory Act of 1901 was adopted for the purpose of relieving certain bequests, devises or gifts from the operation of the original Act of 1895.

There is nothing in this amendatory act to indicate that it was the Legislative intent that its provisions should apply to corporations created under the laws of a sister state. It is a universally accepted rule of construction that an act of the General Assembly of a State granting powers, privileges or immunities to corporations must be held to apply only to corporations created under the authority of that state over which such state has the power of visitation and control, unless the intent that the Act shall apply to other than domestic corporations is plainly expressed in the terms of the act. *Dos Passos on Inheritance Tax Law* (2nd Ed). Sec. 36; *People v. Western Seaman's Friend Soci-*

ety, 87 Ill. 246; Baille's Estate, 38 N. E. Rep. 1007; Humphrey v. State, 70 id. 957.

The appellant board contends that the amendatory act of 1901, if construed as having operation only to exempt corporations organized under the laws of the State of Illinois, is inconsistent with the principles of taxation established by Sections 1 and 2 of article 9 of the constitution of the State of Illinois. Section 1 of article 9 of the constitution of 1870 has reference only to general taxation, and it is conceded in no manner restricts the power of the General Assembly to lay a tax upon the right to succeed to the title to property within the State by inheritance tax from a deceased owner of such property or by devises and bequests to be found in a will of such deceased owner. It is, however, contended that Section 1 establishes the principle that all taxation shall be uniform as to the class upon which it operates; that Section 2 of article 9 limits the power of the General Assembly, when enacting statutes providing for the taxation of other objects or subjects than such as are referred to in Section 1, to the extent of requiring that the principles of taxation established by said Section 1 shall be uniform as to the class upon which it operates. The argument further is: 'Uniformity of taxation, as extending to persons or property in the same class, implies, necessarily, uniformity of exemption as to these same persons or property. Lack of uniformity in the latter respect would be destructive of the former' and it is urged in the same behalf that under the construction given to the amendatory section of the inheritance law, property devoted to educational, religious or charitable purposes is to be subjected to the inheritance or succession tax if the corporation selected to administer the trust is one organized under the laws of another state than that of Illinois, and that property devoted to the same purposes shall be relieved of the tax if committed to the administration of a corporation created under the laws of the State of Illinois.

Inheritance or succession taxes are not laid on the property inherited or taken by devise or be-

quest, but on the right to inherit or to take such property. The right to take property in pursuance of the Statute of descent or of the Statute pertaining to wills is property, but only for the reason that the law-making body of the State has seen fit to create the right to so take by inheritance or by devise or bequest. No person or corporation can inherit property or can take by devise or bequest except when authorized so to do by an Act of the Legislature. Such right may at any time, be abrogated prospectively, at the will of the Legislature; or, in the exercise of the same power in quality though lesser in degree, the law-making department of the State may modify, regulate or impose conditions on the right to succeed by inheritance or devise to the property which was owned by a person who has died. Thus, the power of the Legislature to lay a tax on the right of any person or corporation to take property by inheritance or by devise or bequest is found to be clear and undoubted. In laying such a tax the Legislature may consider the relation which the person or corporation given the right of succession sustains to the deceased, to the property or to the State, and may regulate the amount of the tax to be required in view of such relation, and in exercising this power may lay a tax on the right of one class of persons or corporations to take and may deem it wise to impose no tax upon the right of other classes of persons or corporations to take.

A clear distinction exists between domestic corporations and corporations organized under the laws of other states. Such corporations fall naturally into their respective classes. Over the one—that which the State has created—the State has certain powers of control, and the other is beyond its jurisdiction. Those of its own creation have been endowed with corporate powers for the purpose of subserving the interests of the State and its people; those which have been given life by the laws of a sister state have entirely different ends and objects to accomplish. The law-making power would find

many weighty considerations authorizing the classification of foreign and domestic corporations into different classes, and justifying the creation of liability on the part of foreign corporations to pay a tax on the right to take property by descent, devise, or bequest, under the laws of the State, and at the same time leaving the right of a domestic corporation so to take, free of any exaction". *Estate of Speed*, 216 Ill. 23; aff'd 203 U. S. 553.

436. Charity—Definition.

The Illinois Supreme Court has defined a charity in *Crerar v. Williams*, 145 Ill. 625, as follows:

"A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burthens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature".

437. Public Charity—Statue of a Horse with Drinking Fountain.

In re Estate of Graves, 242 Ill. 24, questions arose on the taxability of a bequest in the fourth clause of the will which reads as follows:

"It is my will and I hereby direct my executors to obtain from the Board of South Park Commissioners of the City of Chicago the privilege and right to erect on the north side of Fifty-fifth Street Boulevard, at a point opposite the present driveway or trotting place for horses in said park, a drinking fountain or drinking basin for horses, and in connection with and in addition thereto a monument, which shall consist of a lifesize bronze statue of a

horse named 'Ike Cook' the first horse to trot in 2:30 over a mile track in the State of Illinois for a wager of \$2,000, \$1,000 a side, in the year 1856, over the Garden City race track, and to inscribe or carve on said monument and fountain, in a conspicuous place, my name as the person erecting said monument, the name of said horse and the time or record of speed of said horse made over said Garden City race track in 1856, as follows, viz: 'Donated and erected by Henry Graves; Ike Cook trotted in 2:30 in 1856 over the Garden City race track, located about eighty rods from this spot in the direction in which he is looking'—said horse to be looking east when erected, in the direction of said race track. And my said executors are hereby directed to expend for such last named monument and drinking fountain, out of my estate, the sum of Forty Thousand Dollars (\$40,000.00). Said South Park Commissioners to maintain and keep in good repair said monument and drinking fountain, free of expense to my estate. (Altered by codicil to not exceed \$40,000.00, executors deciding to expend \$30,000.00).

Held, a charitable and benevolent bequest and is exempt under Section 2½, Law 1895.

438. Religious Corporation — When Organized Under Laws of Foreign State.

The Transfer Tax Law of New York, 1892, exempting religious corporations from tax cannot be extended to exempt a foreign religious corporation from taxation. "A statute of a State granting powers and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only to corporations created by the State and over which it has the power of visitation and control. The Legislature in such cases is dealing with its own creatures, whose rights and obligations it may limit, define and control." *Matter of Balleis*, 144 N. Y. 132.

439. Foreign Corporations—United States a Foreign Corporation—Is Taxable as a Beneficiary.

The United States was the legatee of property under the will of a decedent who died January 30th, 1889. A tax was assessed in February, 1893, at which time, chapter 399, Laws 1892, was in force. The Court held, that the United States “is a government and body politic and corporate ordained and established by the American people acting through the sovereignty of all of the States”, and is a foreign corporation within the meaning of the Inheritance Tax Law in force at the time of decedent’s death and taxable on the legacy. *Matter of Merriam*, 141 N. Y. 479; *Matter of Cullom*, 145 N. Y. 593.

440. Foreign Religious and Charitable Corporations: Fact of Holding Property in Taxing State Immaterial.

Testator died April 7th, 1891, a resident of the State of New York, and by his will bequeathed property to, among others, two foreign corporations, viz: Presbyterian Board of Relief for Disabled Ministers, a Pennsylvania corporation, and The American Board of Commissioners for Foreign Missions, a Massachusetts corporation. It was urged that the latter corporation, having the right to hold real and personal property in New York, relieved it from taxation. The Court held, that the foreign corporations were not within the exemptions referred to in the Inheritance Tax Law, and said:

“Upon the view we have taken the act, chap. 376, of the Laws of 1877, conferring upon the defendant, The American Board of Commissioners for Foreign Missions, a limited privilege of taking and holding real and personal property in this State, does not relieve that corporation from a legacy duty. That was an enabling statute merely. The corporation

remained a foreign corporation as before, but possessing in this State a privilege granted by that statute". *Estate of Prime*, 136 N. Y. 347; *Rothchild's estate*, 71 N. J. Eq. 210.

441. Exemptions—Foreign Charity with Branch in Taxing State.

The Western Seaman's Friend Society, a corporation organized under the laws of the State of Ohio, established a branch in Chicago; acquired property and erected buildings thereon in said city. It claimed exemption from taxation in Illinois on this property under the Illinois Revenue Act of 1872, which, among other things, provided that "all property of institutions of purely public charity, when actually and exclusively used for such charitable purposes, not leased or otherwise used with a view to profit", should be exempt from taxation. The Court said:

"But if a broader construction could be given to the statute, and it could be held to embrace all institutions that dispense charity, whether public or private, and the property used exclusively for that purpose, there is still a valid reason why the property in this case is not exempt from its just proportion of taxation. The statute must, in any event, be understood to have exclusive reference to institutions or corporations created by the laws of this State, and not to foreign corporations that may choose to locate branches in this State. It is only by that comity that exists between states that foreign corporations are permitted to transact in this State, the business for which they were created. The General Assembly has manifested no intention to relieve the property situated in this State; belonging to such corporations, no matter what their objects may be, whether charitable or otherwise, from the burdens of taxation, even if it possesses the power under the constitution to do so.

In any view that can be taken, the property as-

sessed is liable to taxation under the revenue laws of the State, and the judgment will be reversed and the cause remanded". *People v. Western Seaman's Friend Society*, 87 Ill. 246.

442. Charitable Bequests—When Bequest to Local Branch of a Foreign Corporation Is Exempt.

A legacy of \$2,000.00 was bequeathed to the Burlington Branch of the Salvation Army (meaning Burlington, Iowa). The Salvation Army is organized under the laws of the State of New York, but maintained a branch at Burlington, Iowa, which had no charter powers in the latter State. The Court held, the rule that the local statute covers only local domestic organizations is inapplicable where the bequest is made to a local branch to be used within the State of Iowa. *Re Crawford's Estate*, 126 N. W. (Iowa) 774.

443. Charitable Bequests—Law Construed to Favor Exemption.

Liberal construction should be given in favor of charitable institutions taking under the tax law. *Re Spangler's Estate*, (Iowa) 127 N. W. 625.

444. Educational in Part—When One of the Purposes of Corporation Is Educational.

The Metropolitan Museum of Art was incorporated by a special act of the Legislature (Chap. 197, L. 1870) "for the purpose of establishing and maintaining in said city (New York), a museum and library of art, of encouraging and developing the study of the fine arts, and the application of arts to manufacture and practical life, of advancing the general knowledge of kindred subjects, and to that end, of furnishing popular instruction and recreation". This corporation took a legacy of \$1,000.00 by

the will of a decedent who died a resident of the State of New York. By an arrangement with the City of New York "all professors and teachers of the public schools of that city, or other institutions of learning in said city, in which instruction is given free of charge shall be admitted to all advantages afforded by the corporation". Held, that the legacy was bequeathed for "educational" purposes, and that said corporation is in part an educational corporation. *Matter of Mergentime*, 129 App. Div. (N. Y.) 367, aff'd 195 N. Y. no opinion.

445. Exemption—Municipal Corporation Not Exempt.

A bequest to the City of New York for the purpose of providing an ornamental fountain to be placed in one of the streets or public places in the city is taxable and is not exempt from taxation under the Collateral Inheritance Tax Law of 1887 on the ground that the city of New York is exempt by general law. *Matter of Hamilton*, 148 N. Y. 310.

446. Bequest for Saying Mass Is a Charitable Bequest and Exempt from Taxation.

A transfer of property, real or personal, in trust to sell the same and expend the proceeds of said sale in saying masses for the repose of the soul and souls of a deceased wife, mother-in-law and brother-in-law of deceased, and for the deceased father, mother and sister of the deceased, held to be a charitable bequest under the laws of the State of Illinois. *Hoeffner v. Clogan*, 171 Ill. 462. The Court said on this subject:

"The doctrine of charitable uses has been repeatedly held to be a part of the law of this State. The equitable jurisdiction over such trusts was not derived from the statute of charitable uses (43 Eliz.

Chap. 4), but prior to and independently of that statute charities were sustained irrespective of indefiniteness of the beneficiaries or the lack of trustees or the fact that the trustees appointed were not competent to take. (*Heuser v. Harris*, 42 Ill. 425). The statute, however, became a part of the common law of this state.

The statute of charitable uses of Elizabeth has, since its passage, been considered as showing the general spirit and intent of the term 'charitable' and the objects which come within such general spirit and intendment are to be so regarded. The definition given by Mr. Justice Gray in the case of *Jackson v. Phillips*, 14 Allen 56, was adopted and approved by this Court in the case of *Crerar v. Williams*, 145 Ill. 625 * * *. Any trust coming within this definition for the benefit of an indefinite class of persons sufficiently designated to indicate the intention of the donor and constituting some portion or class of the public is a charitable trust. Among such objects are the support and propagation of religion and the maintenance of religious services, to pay the expense of preaching and salary of rectors or the preaching of an annual sermon in memory of the testator. (*Duror v. Motteux*, 1 Ves. Sr. 320). The doctrine of superstitious uses arising from the statute 1 Edward VII, chap. 14, under which devises for procuring masses were held to be void, is of no force in this State, and has never obtained in the United States. In this country there is absolute religious equality and no discrimination in law is made between different religious creeds or forms of worship. The nature of the mass, like preaching, prayer, the communion and other forms of worship, is well understood. * * * It is a public and external form of worship, a ceremonial which constitutes a visible action. * * * A bequest for such special purpose merely adds a particular remembrance to the mass, and does not, in our opinion, change the character of the religious service and render it a mere private benefit. An act of public worship would certainly not be deprived of that character because it was also a special memorial of

some person, or because special prayers should be included in the services for particular persons. Memorial services are often held in churches, but they are not less public acts of worship because of their memorial character. The masses said in the Holy Family Church were public and the presumption would be that the public would be admitted, the same as at any other act of worship of any other christian sect. The bequest is not only for an act of religious worship, but it is an aid to the support of the clergy. Although the money paid is not regarded as a purchase of the mass, yet it is retained by the clergy, and, of course, aids in the maintenance of the priesthood. We think the devise and legacy charitable and a rule applicable to trusts is that they will not be allowed to fail for want of a competent trustee. The court will appoint a trustee or trustees to take the gifts and apply them to the purposes of the trust”.

447. Foreign Corporation—Property Within the Taxing State.

On the question whether personal property within the State of New York owned by a corporation organized without that State was taxable, the Court held: Citing *Matter of Prime*, 136 N. Y. 347, “Bearing in mind the rule that the burden of proving exemption is upon the party asserting it, can it be said that it was the legislative intent to exempt from taxation the personal property within this State of a non-resident or foreign educational corporation, as well as that of a domestic corporation? Strangely indeed we look in vain for an authoritative decision by the Courts of our State directly upon the question, unless it be in the *Matter of Prime (supra)*”, in which it was held that a foreign corporation was taxable. “While in the case cited the bequest was to a Board of Foreign Missions, rather than to a corporation of another State and the decision related to the liability for

Inheritance tax rather than of a general tax, yet I cannot see why the reasoning of the decision is not at least equally applicable to the case at bar * * *. The Supreme Court of Illinois in the case of *People v. Seaman's Friend Society*, 87 Ill. 246, held that a statute of that State exempting from taxation all property of institutions of public charity must be understood to have exclusive reference to institutions or corporations created by the laws of the State of Illinois and not to foreign corporations, and hence that a charitable institution of the State of Ohio, was not exempt from taxation for property situated within the State of Illinois." *People v. Cameron*, 124 N. Y. S. 949.

448. Young Men's Christian Association—When Exempt.

A bequest to the Y. M. C. A. and a bequest to the Y. W. C. A. is exempt from taxation under the Transfer Tax Law of New York, as both institutions are broadly educational in their character. *Re Moses*, 123 N. Y. S. 443.

CHAPTER XXVII.

CERTIFIED COPY OF PAPERS—REPEAL.

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| 449. Section Twenty-nine.
450. Section Thirty.
451. Section Thirty-one.
452. Amendatory Act Does Not Relieve Previously vested Interests. | 453. Statutes — When Revision Amounts to Continuation of the Act Superseded.
454. New Enactment Embodying the same Principle of Law Repealed. |
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449. Section Twenty-nine. When property or any interest therein or income therefrom, shall pass to or for the use of any person, institution or corporation by the death of another, by deed, instrument or memoranda, such passing shall be deemed a transfer within the meaning of this act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

450. Section Thirty. On the written request of the County Treasurer or county judge, in the county wherein an appraisement has been initiated, the clerk of the County Court and in counties having a Probate Court, the clerk of the Probate Court and the recorder of deeds shall furnish certified copies of all papers within their care or custody, or records material in the particular appraisement, and the said clerk and recorder shall receive the same fee or compensation for such certified copies as they would be entitled by law in other cases, which shall be paid to them by the County Treasurer of the proper county, out of moneys in his hands on account of inheritance tax collections, on the presentation of itemized bills therefor, approved by the county judge of the proper county.

451. Section Thirty-one. That "An Act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, as amended by act approved May 10, 1901, in force July 1, 1901, and all laws or parts of laws inconsistent herewith be and the same are hereby repealed: Provided, however, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the State of Illinois may have at the time of taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced: and all appeals and rights of appeal in all suits pending, or appeals from assessments of tax made by appraisers' reports, orders fixing tax or otherwise existing in this state at the time of the taking effect of this act.

452. Amendatory Act Does Not Relieve Previously Vested Interests.

"The rule is considered settled in this State that neither original statutes nor amendments have any retroactive force unless in exceptional cases the Legislature so declares." *Matter of Miller*, 110 N. Y. 216.

453. Statutes—When Revision Amounts to Continuation of the Act Superseded.

"In *Henavie v. N. Y. C. & H. R. R. Co.* (154 N. Y. 281) it was held: The rule in the case of a revision of statutes is that where the law, as it previously stood, was settled either by adjudication or by frequent application of the statute without question, a mere change in the phraseology is not to be construed as a change in the law, unless the purpose of the Legislature to work a change is clear and ob-

vious. Therefore, because Section 242 prescribes that 'all property' shall be subject to the transfer tax and because of the revision of the statute should not be held to work a change in the settled law unless the legislative intent to that effect is clearly manifest, we are of opinion that the seat held by the testator was subject to the tax imposed upon it." *Matter of Hellman*, 174 N. Y. 254, reversing 77 App. Div. (N. Y.) 355.

454. New Enactment Embodying the Same Principle of Law Repealed.

"There are two questions in the case, one of which is common to all the appellants, and one which pertains to the two corporations alone. The general question is presented by the claim on the part of the appellants, that the only statute in force at the time of the institution of proceedings for assessing the tax, in June, 1891, imposing a legacy tax, was the act chapter 215 of the Laws of 1891, which amended the first section of the Act of 1885, as amended by the act of 1887, by declaring that said first section was amended 'to read as follows', and then proceeded to recite the first section as amended. The act of 1891 did not, in terms repeal the corresponding section in the former acts. The section, as amended, embodied the same principle in respect to the taxation of what, for brevity, may be called collateral inheritances, as did the corresponding section in the former acts, and made no change in the rate, but in prescribing the rule it does not follow the exact language of the prior acts.

The claim, as we understand it, is that a statute which amends a prior statute in some particulars under the formula, 'so as to read as follows', operates as a repeal of the whole prior statute, unless provisions intended to be retained are incorporated in the amended statute in the precise words of the former statute, without change of phraseology, and that it makes no difference although the same provision in substance is contained in the amending, as in the original statute, nor although the transposition

and collocation of words in the amending act was for the purpose of adjusting the new features brought in by the amendment so as to make the new and the old provisions harmonious in their relation and expression. Starting with this premise, it is then claimed that the first section of the act of 1887 having been repealed by implication, without saving to the State the right to proceed under the prior law to assess and collect the tax on estates of decedents who died prior to the passage of the Act of 1891, there was no law when the assessment in this case was made authorizing such assessment. No assessment it is insisted could be made at that date under the Law of 1887, because the first section of that act (the one imposing a tax) had been repealed by the Act of 1891, before any fixed right of the State to assess and tax the estate in question had accrued, and no assessment could be made under the Act of 1891, because that Act was prospective and applies only to cases where death occurred subsequent to its passage.

By this process of reasoning it is sought to establish that the tax in this case was unauthorized and although it is admitted that if the Act of 1887 had remained in force, or, if the decedent had died after the passage of the act of 1891, or, if the language of the first Section of the Act of 1887, as to the taxation of Collateral Inheritances, had been incorporated *ipsissimis verbis* in the Act of 1891, the interests in question would have been taxable, yet it is insisted that the right to tax has been lost by the lack of verbal identity between the two sections. We think the contention upon this point has no support in authority or reason." *Estate of Prime*, 136 N. Y. 347.

CHAPTER XXVIII.

PRACTICE AND PROCEDURE.

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PRACTICE AND PROCEDURE.

455.

The General Subject.

Practice and procedure under the Inheritance Tax Law of Illinois is, in the main, a system of unwritten rules fashioned by the novelty of questions arising from the operation of a special law which has little statutory or traditional method of procedure.

These rules have developed out of experience and expediency in securing regularity for the institution and prosecution of appraisements, or suits to determine the taxability of property.

There has also been gradually established by the different state and county officers certain requirements or rules, for the orderly discharge of the duties charged to them, or the powers invested in them, by the tax law.

Probably ninety per cent. of all transfers never reach appraisal, nor are they subjected to judicial proceeding to determine taxability; but these same transfers come within the scope of some section of the law imposing a stricture or limitation on possession or title to property, which said state or county officers are legally empowered to relieve.

All rules relating to practice or procedure, whether established by law, order of court or custom, or exacted by state or county officers, are intended to be covered under the head of "Practice and Procedure."

456. First Contact with the Law Usually Arises Out of Section Nine.

The contact with the tax law usually begins with Sec-

tion 9 (L. 1909)* which prohibits corporations, banks, trust companies, deposit companies, institutions" or persons, in possession or control of securities, deposits and assets belonging to or standing in the name of a decedent, resident or nonresident of the state, or belonging to or standing in the joint names of such a decedent and one or more persons (and prohibits corporations, banks, associations, etc., from making book or record transfers of securities) from transferring or delivering the same to executors, administrators, survivors and other claimants without giving ten days' notice to the Attorney General and State Treasurer of the time and place of such intended transfer or delivery, and without retaining a sufficient amount of property to pay inheritance taxes and interest, *unless* the Attorney General and State Treasurer consent in writing to such transfer or delivery.

Power is given said state officers to make an examination of the property at the time of the delivery or transfer.

457. Penalty for Noncompliance Is Incurred When?

A safe deposit company, trust company, bank, corporation, institution or person is subject to a penalty of one thousand dollars, plus the inheritance taxes and interest:

(a) For failure to serve on the Attorney General and State Treasurer notice of the time and place of the intended transfer or delivery of securities, deposits or other assets.

*Analysis of law on pages 159 to 168.

*1. Includes Building Loan Associations; Attorney General's opinion, 1910.

- (b) For failure to allow said state officers, or their representatives to examine such securities, deposits or other assets at the time of the transfer or delivery thereof.
- (c) For failure to retain (unless consent in writing for the transfer or delivery is given by the Attorney General and State Treasurer) a sufficient portion or amount to pay the inheritance tax and interest which may thereafter be assessed.

458. State Has an Interest in Every Estate.

In *National Safe Deposit Company v. W. H. Stead, Attorney General et al.*, 250 Ill. 584, the court held:

"It is clear, therefore, that the State has an interest in every estate that is subject to the payment of an inheritance tax, and in all such proceedings the Attorney General or some other designated officer is the representative of the State (*People v. Sholem*, 238 Ill. 203). We think, therefore, that the conclusion, from what has been said, logically and necessarily follows that where a lessee of the appellant (safe deposit company*) dies leaving property in one of the safety deposit boxes or safes of the appellant, the State, by its proper representative, has the right to be advised whether or not it shall ultimately be established that it has an interest in such property."

459. First Question with Depositary, Corporation, Association or Bailee Is Liability.

When an executor, administrator, survivor or other claimant makes demand of a corporation, bank, trust company, deposit company, institution or person who is in possession or control of property affected by said section, the question that first arises with the corporation,

*Author's words.

bank or other institution, etc., is usually a practical one —how to transfer or deliver the property without sustaining liability.

Few depositaries or corporations have thus far assumed the risk of estimating the tax and interest, and withholding, after notice and examination, sufficient property to cover, as an error in the estimate would incur the penalty and liability.

Therefore the safe deposit company, trust company, bank, corporation, institution or person, must primarily elect between two courses of procedure:

1st. The procedure according to the rules of the state officials in which is contemplated the release of the depositary and corporation from penalty and liability by an official written consent to transfer or deliver. (The release of the property does not lift the lien on same for the tax as against legal representatives and beneficiaries.)

2nd. The procedure according to the particular provisions of the law by the service of notice, examination and retention of property to cover the tax and interest which is independent of the rules for granting consents.

The procedure and form notices hereinafter outlined are designed to cover only cases where a consent to transfer or deliver is desired, and are not intended to lay down a practice or anticipate a legally sufficient notice where the corporation or depositary acts independently under the law. All forms hereinafter set forth, when properly used, are sufficient to state a case for the issuance of a "consent."

460. Estimation of Tax and Retention to Cover.

Whether or not property is subject to an inheritance tax and interest, or if subject thereto, the question of

the amount thereof, are frequently questions of law, and sometimes difficult ones.

The basis or accrual of an inheritance tax and the method of determining same, has practically nothing in common with the General Revenue Law. The decisions in General Revenue cases are only occasionally applicable in elucidating problems in inheritance tax cases.

It may be said that in a general sense the General Revenue Law (a tax on property) is a tax according to "fact"; and the inheritance tax (a tax on the right to receive property) is a tax according to "law"; although the amount of the tax in both systems is determined by the value of the property and fixed rates. But where a knowledge of a fixed rate would be sufficient to determine a General Revenue tax, it might be only an incidental element in determining the amount of an inheritance tax.

461. Basis for Issuing Consent—In General.

The procedure for obtaining a consent to transfer securities, deposits or other assets is based on the residence of decedent at death; whether there is administration of the estate; the situs of the property; the nature and character thereof, and security for the tax.

The requirements of the state officials are intended to safeguard the interests of the State, and at the same time accomplish the quickest possible release of the property and disposition of the question of taxation.

These requirements are invoked in all cases where the bank, trust company, safe deposit company, corporation, institution or person seeks a consent, rather than estimate and retain the tax and interest.

462. Administration of Section Nine—Two Districts.

For the purpose of expediting business under, and insuring the best enforcement of Section 9, the Attorney General and State Treasurer have divided the state into two districts—Cook County, known as the Chicago District; and all other counties, known as the Springfield District, with jurisdiction as follows:

463. Springfield District—Business Transacted at Springfield, Illinois.

All banks, trust companies, deposit companies, corporations, institutions and persons located or having their principal office in Illinois, but outside of Cook County, and having in their possession or control securities, deposits, or other assets (of small or large value or amount) belonging to or standing in the name of a decedent who died a resident or nonresident of this state, or belonging to or standing in the joint names of such a decedent and one or more persons (including property held as collateral) should transact their business with the Attorney General at Springfield.

464. Book or Record Transfers.

All banks, deposit companies, trust companies and corporations covered by the Act located or having their principal place of business or transfer books in Illinois, but outside of Cook County desiring to transfer their stock or registered bonds on the books of the corporation or association when said stock or bonds (of small or large value and including collateral) belong to or stand in the name of a decedent who died a resident or nonresident of this state, or when said securities belong to or stand in the joint names of such a decedent and one

or more persons, should transact their business with the Attorney General, at Springfield, Illinois.

**465. Chicago District—Comprises Cook County.
All Business Transacted by Inheritance
Tax Attorney at Chicago. Tangible Prop-
erty or Evidences Thereof.**

All corporations, banks, trust companies, safe deposit companies, institutions and persons located, or having their principal office or principal place of business, in Cook County, and having in possession or control securities, deposits or other assets (of small or large value) belonging to or standing in the name of a decedent who died a resident or nonresident of this state, or belonging to or standing in the joint names of such a decedent and one or more persons (including property held as collateral) should transact their business with the Inheritance Tax Attorney* at Chicago.

466. Book or Record Transfers.

All corporations, banks, trust companies, deposit companies, associations, etc., comprehended by the law, having their principal office, principal place of business or transfer books outside the State of Illinois, or in Cook County desiring to transfer their stock or registered bonds on the books of the corporation, or association, when said stock or bonds (of small or large value, including collateral) belong to or stand in the name of a decedent who died a resident or nonresident of this state, or belong to or stand in the joint names of such a decedent

*Inheritance Tax Attorney is, by appointment, joint representative of State Treasurer and Attorney General. The words "Tax Office" occurring hereinafter have the same significance as Inheritance Tax Attorney.

and one or more persons, should transact their business with the Inheritance Tax Attorney at Chicago.

Railroads and other corporations doing an interstate business generally come within the Chicago District.

467. Communication to Wrong District.

In case parties communicate with the wrong district, the matter is promptly referred to the proper district for disposition and no rights are lost by such error.

NOTICE—STATUTORY TIME WAIVED.

The statutory time prescribed for notice is usually waived when the corporation or depositary defer the transfer until the issuance of consent.

468. Consent—Only Lifts Liability for Inheritance Tax.

The consent of the Attorney General and State Treasurer does not relieve the corporation, bailee or depositary from liability under the general laws. It only clears and relieves liability for penalty under Section 9 in inheritance tax cases.

469. Notice.

Notice must be given by the corporation, bank, trust company, deposit company, institution or person. There is no duty on the survivor, beneficiary, heir, administrator, executor or trustee or transferee to give the notice provided by Section 9.

(See decision under analysis of Section 9, *supra*.)

470. Springfield District—How to Obtain Consent to Transfer. Deceased a Resident or Non-resident of Illinois.*

The Attorney General and State Treasurer will, whenever possible, upon application of a safe deposit, banking or trust company, issue consents in writing for the transfer or delivery of securities, deposits or other assets. In order that such consents may issue, the State Treasurer and Attorney General must have before them certain information as to the estate of the decedent. To the end that consents may be issued without undue delay and that the necessary information may be before them, the Attorney General and State Treasurer have prepared, and will furnish, forms of affidavits to be used in such cases. One form of affidavit is entitled "ADMINISTRATION," and the other "No ADMINISTRATION."

When application is made to you for the delivery or transfer of securities, deposits or other assets, belonging to or standing in the name of a decedent or belonging to or standing in the joint names of a decedent and one or more persons, and an executor or administrator has been appointed in Illinois, and you have determined the proper person to whom to make the transfer or delivery, have the affidavit entitled "ADMINISTRATION" executed by the executor, administrator, survivor or other person cognizant of the facts and mail such affidavit to the Attorney General, Springfield, Illinois. Upon receipt of same, joint consent will, except for the delivery of the contents of a safe deposit or other box or boxes, issue IN THE NEXT MAIL.

In case the affidavit discloses a safe deposit, or other box or boxes, in your possession or under your control,

*Procedure as announced in circular pamphlet issued by Attorney General on December 1st, 1911.

belonging to or standing in the name of a decedent or belonging to or standing in the joint names of a decedent and one or more persons, arrangements will be made for the *immediate examination* of the contents of the safe deposit or other box or boxes and for the delivery and transfer of the contents thereof. Emergency cases are, when possible, relieved by telephone communication, the Attorney General arranging for a local representative to act.

471. No Administration.

When no administration is pending you may have executed an affidavit entitled "No ADMINISTRATION." Mail such affidavit to the Attorney General, at Springfield, Illinois. Consents in such cases will issue with all dispatch possible, which, in most cases, will be by next mail.

472. Deceased Resident of Illinois—Administration—Transfer of Shares of Stock and Bonds on the Books of the Corporation.

When you receive an application to transfer, on the books of your corporation, stock or registered bonds, either by the issuance of a new certificate or otherwise, use the affidavit "ADMINISTRATION," and particularly describe the stock by its certificate numbers, and the bonds by serial or other identification numbers, and further particularly state the exact name or names the stock stands in,—for example:

Certificate No. A. B. 6471 for 10 shares of the stock of First National Bank of London, Illinois, par value \$100 each, standing in the name of John Z. Jones and G. Fred Smith.

Certificate No. 42 for 2 shares of The International Food Company, par value \$25.00 each, stand-

ing in the name of Mary Y. Jones and Sylvester D. E. Ward.

Six 2nd mortgage 4½% gold bonds of Chicago & Springfield R. R. Co., maturing July 1st, 1940, par value \$1,000 each, standing in the name of The Robt. G. Brown Estate and B. Sam Green, deceased.

Have said affidavit filled out and executed in your place of business and mail to the Attorney General at Springfield, and consent to transfer will issue to the corporation.

473. Decedent a Nonresident of Illinois—Book Transfer of Stock or Registered Bonds.

When application is made to any bank, safe deposit company, trust company, corporation or stock association for the transfer on the books of the company or association, of their shares of stock or registered bonds, when such securities belong to or stand in the name of a decedent who died a nonresident of this state, or belong to or stand in the joint names of such a decedent and one or more persons, the draft notice hereinafter set forth and generally referred to as Form "SS", should be served, by mail or messenger, upon the Attorney General, at Springfield, Illinois.

On receipt of this notice by the Attorney General, investigation is promptly made to ascertain whether there is a tax, and whenever necessary, a printed list of questions is required to be answered, by the foreign executor, administrator or trustee, in affidavit form. These questions are the same as required by the Chicago District. If said investigation discloses no tax, consent issues immediately. If a tax appears to be due the state, consents are issued on sufficient security given, or when the tax is paid in the appraisement proceeding immediately instituted under the law for its legal assessment.

474. Form Administration Affidavit Required in Springfield District.

To the Attorney General and State Treasurer of the State of Illinois:

In the Matter of the Estate of, deceased.

STATE OF ILLINOIS, }
..... COUNTY. } ss.
.....

..... of the of
....., County of and State of Illinois, being duly sworn on oath deposes:

1st. That said decedent died on or about the day of A. D., a resident of the County of and State of Illinois, leaving (No or A) last will and testament.

2nd. That of the city of County of and State aforesaid, is now acting as (Administrator or Executor)
by order of the Court of the County of

3rd. That the gross personal property owned by decedent at death, situate in this and in every other State and Country, had a gross value of not to exceed \$ and consisted of (Notes, Accounts, Stocks, Cash, etc.)

..... And real estate and interests therein in the State of Illinois not to exceed in gross value \$ and generally situate and consisting of as follows:

.....
.....

4th. Further, this affiant declares he has a general knowledge of the financial and physical condition of de-

cedent for a number of years prior to his death, and thereupon answers the following questions:

(a) Did decedent, during life and while sick or injured, make gifts or transfers of money or property (real or personal), or of any interests therein?

ANSWER.....
(Yes or No)

(b) Did decedent, during life, transfer, assign, or part with money or property (real or personal), or any interest therein, reserving any part thereof or income therefrom until death?

ANSWER.....
(Yes or No)

5th. Affiant further says that

(Safety Deposit Company

.....has in its possession or under its control the
or Institution)

contents of a safety deposit or other box or boxes, belonging to or standing in the name of said decedent, or in the joint names of said decedent and.....

6th. That said decedent, at the time of decease, had on deposit in the.....of the City of.....

(Bank or Institution)

.....County of.....and State
aforesaid \$, which affiant
requests shall be immediately transferred to.....

7th. If decedent owned shares of stock in Illinois corporations, name corporation, certificate numbers and shares evidenced thereby on the reverse side hereof.

.....
(Signature of Claimant)

.....
(Postoffice Address)

Subscribed and sworn to before me this.....
day of A. D.

.....
Notary Public.

The foregoing affidavit is served as notice of the transfer of property described and claimed therein, at the undersigned's place of business in the City of.....
..... County ofand State aforesaid, on the.....day of.....A. D....
pursuant to the provisions of section 9 of an Act to tax gifts, legacies, inheritances, transfers, etc., Laws of 1909.

DATED this.....day of.....A. D....

(Signature of Bank, Corporation, Depositary, etc.)
By.....

(All real estate in Illinois and all personal property, including cash, wherever situate must be included.)

475. No Administration.

To the Attorney General and State Treasurer of the State of Illinois, Springfield District.

In the Matter of the Estate of.....deceased.

STATE OF ILLINOIS, }
..... COUNTY } ss.
.....

.....of the.....of
.....County of.....
and State of Illinois, being sworn on oath deposes:

1st. That said decedent died on or about the.....
day ofA. D....., a resident
of the County ofand State of Illinois,
leaving.....last will and testament.
(No or A)

2nd. That said deceased left h....surviving.....
..... and
standing in the relation of.....as heirs
h....only heirs at law.

3rd. That the gross personal property owned by decedent at death, situate in this and in every other State and Country, had a gross value of not to exceed \$....., and consisted of.....

(Notes, Accounts,

Stocks, Cash, etc.)

And real estate and interests therein in the State of Illinois not to exceed in gross value \$..... and generally situate and consisting of as follows:

4th. Further, this affiant declares he has a general knowledge of the financial and physical condition of decedent for a number of years prior to his death, and thereupon answers the following questions:

(a) Did decedent, during life and while sick or injured, make gifts or transfers of money or property (real or personal), or of any interests therein?

ANSWER.....
(Yes or No)

(b) Did decedent, during life, transfer, assign or part with money or property (real or personal), or any interest therein, reserving any part thereof or income therefrom until death.

ANSWER..... (Yes or No)

5th. Affiant further says that

(Safety Deposit Company or Institution.)

has in its possession or under its control the contents of a safety deposit box or other box or boxes, belonging to or standing in the name of said decedent, or in the joint names of said decedent and

6th. That said decedent, at the time of decease, had
on deposit in the (Bank or Institution)
of the City of County of
..... and State aforesaid
\$..... which affiant requests shall be imme-
diately transferred to

7th. If decedent owned shares of stock in Illinois corporations, name corporation, certificate numbers and shares evidenced thereby on the reverse side hereof.

.....
(Signature of Claimant)

..... (Postoffice Address)

Subscribed and sworn to before me this
day of A. D.

Notary Public.

The foregoing affidavit is served as notice of the transfer of property described and claimed therein, at the undersigned's place of business in the City of County of and State aforesaid, on the day of A. D., pursuant to the provisions of Section 9 of an Act to Tax Gifts, Legacies, Inheritances, Transfers, etc., Laws of 1909.

Dated this day of A. D.

(Signature of Bank, Corporation, Depository, etc.)

By [John C. H. Stothard](#)

476. Form "SS" Notice.

(Used in both Springfield and Chicago districts.)

(Name of Corporation Giving Notice)

NOTICE.

To HON..... Attorney General.

To HON..... State Treasurer.
(Springfield, Illinois, or Chicago, Illinois, as the case may be)ESTATE OF DECEASED, who
died a resident of
(City, County and State)ADMINISTRATION WHERE
(Yes or No)(Name and Postoffice Address of Executor, Administrator, Trustee or
Applicant for Transfer)Pursuant to the provisions of Section Nine of an Act
to Tax Gifts, Legacies, Inheritances, Transfers, etc.,
Laws of Illinois, 1909:You are hereby notified that demand has been made
upon the undersigned for the transfer of(Describe Shares of Stock by Certificate Numbers; Describe Bonds by
Numbers and Series. If Held as Collateral, State Facts)To
(Name and Address of Transferee)The property described herein is shown upon our
books in the name of

(If Above Named Decedent, or Otherwise, so State)

The name and address of party desiring transfer is
.....
who claims as
(Executor, Administrator, Trustee, etc.)

(Name of Corporation Giving Notice)

By.....

DATED:.....

CHICAGO DISTRICT.**477. Chicago District—All Business Transacted with Joint Representative* of Attorney General and State Treasurer, at Chicago, Illinois.**

The Attorney General and State Treasurer have an auxiliary office at Chicago, which is in the charge of their joint representative duly accredited to conduct business under Section 9.

A general classification of action in this district may be summarized as follows:

1. Bank deposits deceased resident of Illinois—administration of the estate in Illinois.
2. Bank deposits—deceased resident of Illinois—no administration pending.
3. Bank deposits—deceased a nonresident of Illinois—administration or no administration.
4. Money, securities, deposits and assets (other than bank deposits) including collateral, in control or possession of a bank, trust company, corporation, institution or person—decedent a resident or non-resident of Illinois—administration or no administration.
5. Book transfers of shares of stock and registered bonds—decedent a resident or non-resident of Illinois, administration or no administration.
6. Safe deposit company—storage company, etc.,—decedent a resident or non-resident of Illinois—administration or no administration.

*Inheritance Tax Attorney, First National Bank Building, Chicago, Illinois.

478. Bank Deposits—Deceased a Resident of Illinois—Administration of Estate in Illinois.

When application is made to a banking institution by an administrator or executor, for the transfer of a bank deposit of money (of large or small amount) in its possession or under its control and said money is owned by or stands in the name of a deceased resident of Illinois, or is owned by or stands in the joint names of such a decedent and one or more persons, said banking institution may with safety, immediately, and without previous consent, transfer the entire deposit to said executor or administrator, if said banking institution complies with the following conditions:

FIRST: Have said executor or administrator duly execute and acknowledge in your bank the "ADMINISTRATION" (Form A) affidavit used in the Chicago District and hereinafter set forth, with every question and point of information answered, and the names, address and dates clearly and unmistakably spelled and written.

SECOND: Mail or deliver said affidavit the same day that the money is transferred, to the Inheritance Tax Attorney, at Chicago, Illinois. Consent is thereupon issued at once and mailed to said banking institution.

479. Transfer—What Constitutes.

A transfer does not necessarily mean the delivery by the bank of the money itself to the executor or administrator. A transfer may be accomplished by crediting said executor or administrator on the books of said bank with the money in question.

480. (Form A.) Administration Affidavit (Chicago District).

.....
(Name of Bank)

ADMINISTRATION.

ESTATE OF
deceased.

TRANSFER \$.....

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

.....of the City of Chicago (or if other city or town in Illinois, so state), County of Cook and State of Illinois, being duly sworn on oath deposes:

That he is regularly acting as executor or administrator of the above named estate by the authority of the Probate Court of Cook County (or if other county, so state), Illinois, evidenced by the official letters and orders thereof issued on the.....day of.....A. D....

That the above named decedent died testate or intestate on....., a resident of and domiciled in the State of Illinois.

And it is alleged and affirmed by affiant that at the time of decedent's death the.....
(Name of Bank, Trust Company, etc.) of Chicago had under its control, property belonging to said decedent, consisting of and standing in the name of

which property affiant hereby requests shall be immediately transferred to him.

(Executor, Administrator or Trustee)
Residing at

(Business or Residence Telephone)

Subscribed and sworn to before me this
day of A. D.

Notary Public.

The foregoing affidavit is served as notice of the transfer of property described and claimed therein, at the place of business of the undersigned in Chicago on the day of A. D. pursuant to the provisions of Section Nine of an Act to Tax Gifts, Legacies, Inheritances, Transfers, etc., Laws of 1909.

**481. Bank Deposits—Deceased Resident of Illinois
—No Administration Pending.**

When application is made to the bank by the rightful claimant for the transfer of a bank deposit when the money is owned by or stands in the name of a deceased resident of Illinois, or is owned by or stands in the joint names of such a decedent and one or more persons and said bank determines to make the transfer either before, or without administration, said bank may, with safety, before receiving "consent", transfer immediately, any amount up to and including \$475.00 of the de-

posit, if the rightful claimant executes, in the bank, the "No ADMINISTRATION" affidavit, (Form N) hereinafter set forth, with every question and point of information answered, and said bank does thereupon, the same day the money is transferred, mail or deliver said affidavit to said Inheritance Tax Attorney.

Consent is thereupon issued for the entire deposit, if No Tax. If taxable, no consent is issued on the balance of the deposit until the tax is paid or security therefor given.

If the deposit is \$475.00 or less, the consent having issued to the bank, the transaction is closed.

The form of "No ADMINISTRATION" now in use in the Chicago district is as follows:

482. (Form "N.") No Administration Affidavit—Chicago District.

.....
(Name of Bank)

ESTATE OF

(Deceased)

TRANSFER \$.....

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

.....of the City of Chicago,
County of Cook and State of Illinois, being duly sworn,
on oath deposes:

1. That the above named decedent died intestate on the day of A. D. a resident of, and domiciled in the State of Illinois, and left surviving as decedent's only heirs at law and next of kin:

NAME	RELATIONSHIP TO DECEDENT	ADDRESS
------	--------------------------	---------

.....
.....
.....

2. That the gross personal property owned by the decedent at death, situated in this and every other state and country, had a gross value of \$..... and consisted of

(Notes, Cash, Securities, Chattels, etc.)

.....
.....
.....

And real estate in the State of Illinois not to exceed in gross value \$..... and situate as follows:

(Name of Street and House Number. If Vacant, Number of Lots and
General Location by Streets)

.....
.....

3. Affiant further states that the assets of said estate are chargeable with the following:

Funeral expenses \$.....

Indebtedness contracted by decedent
and unpaid at the time of his death
not less than * * * \$.....

Total minimum indebtedness \$.....

That the net value of decedent's
property at the time of death did
not exceed \$.....

4. Further, this affiant positively declares he has a general knowledge of the financial and physical condition of decedent for a number of years prior to h.... death and thereupon answers the following questions:

a. Did decedent during life and while sick or injured make gifts, or transfers, of money or property (real or personal) or of any interests therein, exceeding in value \$475.00?

ANSWER.....
(Yes or No. Give Particulars)

- b. Did decedent during life transfer, assign or part with money or property (real or personal) or any interest therein, reserving any part thereof or income therefrom until death?

ANSWER.
(Yes or No. Give Particulars)

5. Affiant claims that the.....
(Name of Bank)

has under its control property of the decedent which stands in the name of
and consists of

.....
and which said affiant requests the immediate transfer thereof to

(Legal Relation of Creditor of Decedent)

6. Affiant further states that he is the same person described as
in Clause One of this affidavit.

.....
Residing at
Business or residence telephone.....

Subscribed and sworn to before me this.....
day of..... A. D.

.....
Notary Public.

The foregoing affidavit is served as notice of the transfer of property described and claimed therein, at place of business of the undersigned, in.....
(City)
on the..... day of.....
pursuant to the provisions of Section Nine of an Act to Tax Gifts, Legacies, Inheritances, Transfers, etc., Laws of 1909.

.....
(Name of Bank)

By.....
(Name of Officer and Title)

483. Bank Deposits—Deceased a Nonresident of Illinois—Administration or No Administration.

When a banking institution has in its possession or under its control a money deposit or deposits owned by or standing in the name of a decedent who died a non-resident of this state, or owned by or standing in the joint names of such a decedent and one or more persons, no transfer can be made of said deposit or deposits or any part thereof (under the procedure of tax office) until consent issues. When application is made for the transfer of said deposit or any part thereof, a notice should be served upon said Inheritance Tax Attorney. Said notice is described as Form "SS" hereinbefore set forth on page 313.

On receipt of the notice, the Tax Office acts as is hereinafter set forth in case of *non-residents*.

484. 4th. Money, Securities, Deposits or Other Assets (Other Than Bank Deposits, but Including Collateral) Under Control or in Possession of a Bank, Trust Company, Corporation, Institution or Person—Decedent a Resident or Nonresident of Illinois—Administration or no Admnistration.

When a bank, trust company, corporation (other than a safe deposit company) institution or person has under control or is in possession of securities, deposits (except bank deposits) or other assets of small or large amount, including collateral, owned by or standing in the name of a decedent, who was a resident or non-resident of Illinois at death, or owned by or standing in the joint names of such a decedent and one or more persons, desires a consent to transfer or deliver the same, a form

"SS" notice should be served by mail or messenger, on said Tax Attorney, who thereupon acts as follows.

485. a. Residence in Illinois—Administration.

If the notice discloses the residence of decedent to have been in Illinois at death and administration under security of a bond is pending in this state, the state is generally secure and the consent issues at once, regardless of the amount of property.

If the character or amount of property, or other circumstance, seems to necessitate an examination of the same, an appointment is made with the depositary or bailee, and a representative of the state officers examines the property and reports the character, amount and estimated value.

In cases where it appears that the bond of the executor or administrator is insufficient to warrant the issuance of consent without securing the tax, arrangements are made for such security as a basis for releasing the property.

486. b. Residence in Illinois—No Administration.

Where no administration is pending an examination is made of the property. If it appears from such that a tax is due, no consent to transfer is issued until security is provided for the tax. If no tax is disclosed consent issues at once.

487. Security.

The security demanded as a basis for issuing consents is generally a deposit of money with a bank.

488. Reports of Examiners.

Reports of examiners are not disclosed to the public.

Property of a living person, commingled with a decedent's, may be described on such report, and other information may be contained therein which should not and is in no case disclosed by the state officials.

489. Nonresidents—When Decedent Is a Nonresident of Illinois and Regardless of Whether There Is or Is Not Administration of the Estate. Action of the Tax Office on Receipt of Form "SS" Notice.

Any safe deposit company, trust company, bank, corporation, institution or person in possession or control of securities, deposits or other assets (of small or large amount—including collateral) owned by or standing in the name of a decedent who died a non-resident of this state, or owned by or standing in the joint names of such a decedent and one or more persons, cannot transfer or deliver such property within the practice of the tax department until a consent therefor is issued. When said safe deposit company, trust company, bank, corporation, institution or person is in possession or control of property so owned or held and an application is made by the administrator, executor or rightful claimant for the transfer or delivery thereof, said safe deposit company, etc., should serve upon the Tax Attorney Form "SS" notice. On receipt of said notice a printed list of questions, commonly called Non-Resident questions* is immediately mailed to the non-resident executor, administrator, trustee, or applicant for transfer, which questions must be answered in detail by affidavit.

*Any person, corporation or institution interested in an actual case may obtain these printed questions in blocks of five to twenty-five free of charge, on written request to the Inheritance Tax Attorney. To include these questions in this book would inevitably lead to confusion. New questions and interpretations of the law will necessarily compel changes.

These questions are designed to fully cover all information legitimately necessary to determine whether a tax has accrued to the State of Illinois by reason of the death of decedent by the ownership, actually or constructively, of property "within the state."

They are further designed to cover in one "transaction" the innumerable points, which, under a scheme or system of determining a tax on each item of stock or property as it arose for consideration, would require everlasting correspondence, delay and supplementary or additional proceedings.

On receipt of the affidavit answering said questions, a written consent to transfer is sent to the corporation or depositary, releasing all securities, deposits or other assets, if no tax appears to be owing the state.

If there is a tax, no consent is issued until the same is paid or a deposit of money made with a bank to secure the State Treasurer and Attorney General for assuming the responsibility of releasing the property without payment of tax.

In case a tax is shown by the affidavit the tax attorney secures the appointment of an appraiser, who sets the case for hearing at the appraisers' hearing room (located at the Inheritance Tax Office), and proceeds to dispose of the case. After the case is heard as provided by Section 11 (more particularly outlined hereinafter under "Sec. 11"), the executor, trustee, administrator, heirs, beneficiaries and their respective counsel, receive from the County Judge having jurisdiction of the case, a notice of the amount of tax. Consents are issued on payment of said tax and interest. If a tax is paid within six months from the death of decedent, a discount of five per cent. is allowed and no interest is charged. If the tax

is not paid within six months from the date of death, no discount is allowed and interest runs from the date of death until payment of tax.

490. Deposit—When Made Consent Issues.

A deposit of money may be made with the depositary of the tax office (a national bank) either before or during the appraisement, and when made, consents are issued and mailed at once, before payment of tax.

491. Deposit Returned if No Tax.

A deposit is held until the tax is determined by the County Judge and at that time so much thereof as is necessary to pay the tax and interest is ordered paid to the County Treasurer and the balance, or all in case of No Tax, is immediately returned by the bank (depositary) to the depositor.

The deposit to secure the tax is in the nature of a written guaranty and provides that the money is payable only to the depositor or a county treasurer to liquidate tax. (See "Deposit System" *post*.)

492. Delay in Issuing Consents.

The delay in obtaining consents will most frequently occur by the failure of executors, administrators, trustees, heirs, etc., to act promptly in returning an affidavit, answering the non-resident questions.

493. 5. Book Transfers of Stock and Registered Bonds—Decedent a Resident or Nonresident—Administration and No Administration.

When the corporation or stock association desires to secure a consent to transfer, on the books of the cor-

poration or association, its certificates or shares of stock and registered bonds, when the same are owned by or stand in the name of a deceased resident or non-resident of this state, or owned by or stand in the joint names of such a decedent and one or more persons, the proper proceeding is to serve by mail or messenger, a Form "SS" notice (outlined in the foregoing pages) upon the Tax Attorney.

a. If the decedent died a resident of Illinois and administration is pending the consents are issued at once, regardless of the amount or value of the securities. The exception to this action is infrequent and occurs when the bond of the legal representative appears insufficient.

b. If the decedent died a resident of Illinois and no administration is pending, no consent issues if there appears to be a tax due, until the same is secured or paid, or subsequent administration justifies releasing the property. If there is no tax due consent issues immediately.

c. If decedent died a non-resident of Illinois no consent issues until an affidavit is presented to the tax office answering under oath the non-resident questions, referred to in Par. 489.

494. Nonresident Estates—Affidavit Required.

In all non-resident estates, regardless of the nature or character of the transfer, the requirements of the state officials, before passing on the question of tax and consent, is that the non-resident questions, mailed to every executor, administrator, trustee or other applicant for transfer, must be answered under oath by affidavit. On receipt of the affidavit consent issues as hereinbefore stated.

**495. Safe Deposit Company—Storage Company—
Decedent a Resident or Nonresident of Illinois—Administration or No Administration.**

When a safe deposit company, warehouse company or other depositary conducting a storage or safe deposit business, has in its possession or under its control securities, deposits (of any character) or other assets, belonging to or standing in the name of a decedent who was a resident or non-resident of Illinois, or belonging to or standing in the joint names of such a decedent and one or more persons, and application is made for the transfer of such property, the practice is as follows:

The depositary arranges, by telephone, messenger or letter, with the Inheritance Tax Office for the examination of the box, safe, securities, deposits or other assets, at a certain hour of a certain day, which time is recorded on a calendar kept in the tax office. At the time appointed, a representative properly accredited from said tax office, appears at the office of the depositary (not the office of the attorney or applicant for transfer) and if the claimant of the property is present and is granted access to the box, safe or property, the State's representative makes an examination of the securities, deposits and assets affected by Section 9. Neither the appearance or attendance of an examiner nor the examination and release of the property relieves the depositary from the legal responsibility of determining who is entitled to the property or contents of the box, or the right of access thereto.

496. When Consent Issues.

This examination is reduced to writing and reported

to the Inheritance Tax Office, upon which report it acts as follows:

a. When decedent died a resident of Illinois and Letters of Administration have been granted by some court of probate in the state, consent issues the same day the report of the examiner is received; unless the lack of a sufficient surety on the bond of the executor or administrator makes it necessary that security for the tax be first provided. Consent is promptly issued in all cases of No Tax.

b. When decedent died a resident of Illinois and there is no administration pending. In this class of cases the examiner usually endeavors to secure an affidavit from the claimant of the property, which together with the examiner's report, generally supplies sufficient information for action. Consent in this class of cases issues at once when there is no tax. If a tax is shown, consent issues on security given for the payment of the tax, or when the tax is paid in an appraisement proceeding regularly conducted under Section 11.

c. When decedent dies a non-resident of Illinois, consents are issued as in other cases of transfers of non-residents' property. The fact of administration is immaterial in cases of non-residents. Ancillary administration does not justify the release of the property. An affidavit giving the information specified in the non-resident questions hereinbefore explained is required.

497. Emergency Examinations.

A communication with the tax office two days in advance of the time of examination is usually sufficient to secure an examiner. However, the tax office acts on notice of one day, or even less, when possible, regardless

of its right to ten days' notice. The safe course is to arrange for examination in advance.

In cases where the claimant of the property is a person "employed" in an occupation preventing his or her appearance at the examination without pecuniary loss or jeopardy of employment, the time of examination will be fixed at an hour which will, so far as possible, prevent such loss or jeopardy.

498. Deposit System.

The deposit system was devised to assist residents and non-residents in securing consents on taxable property before appraisement. When any person or corporation desires the immediate transfer of property which is apparently subject to a tax and it is unsafe for the State officials to issue the consent without security, the Tax Office will estimate the amount of tax, and issue a consent to transfer on the deposit by the executor, trustee, administrator, person or corporation, of a sum of money sufficient to cover the tax and interest.

The amount of the deposit is fixed by the Tax Office, and is intended to be slightly in excess of the actual tax and interest. Both residents and non-residents may use this method of securing immediate consents.

When the tax and interest is determined according to law, the amount thereof is paid out of the deposit to the County Treasurer of the county wherein the appraisement was had. All moneys in excess of tax and interest is returned at once to the depositor, *not to the agent or attorney for the depositor.*

In case the depositor or legal representative anticipates a disagreement in the result of the appraisement and intends to prosecute an appeal to review the assessment, the tax office will on written request before the

close of the appraisement, refrain from ordering the assessment paid, and will allow the deposit to stand until the appeal is disposed of.

No bond, other than for costs, is required in deposit cases, where an appeal is taken.

499. Recommendation to Nonresidents.

One method of getting quick results when the decedent was a non-resident is for non-resident banks, trust companies, brokerage houses and corporations to secure from the tax office a supply of "Non-Resident Questions" which point out the requirements of the State officials, and when a client or patron (executor, trustee, administrator, heir, etc.) desires to secure consent to transfer stock or registered bonds of corporations, securities, deposits or other assets affected by the Illinois Tax Law, have said client or patron answer the questions by affidavit in the place of business of such bank, corporation, etc., and mail the same to said Tax Attorney, at Chicago. Consents will issue by next mail, if no tax, and if a tax, security may be arranged by letter, wire or telephone. This method saves the time of first writing to Chicago or Springfield for the requirements of state officials, and also the time of transmitting the printed requirements or questions to the non-resident corporation, bank, executor, administrator, etc., by mail.

Many foreign brokerage houses and banks have adopted this practice.

The tax office will always telegraph (collect) estimate of tax shown by affidavit, so deposit to cover same may be made with as little delay as possible.

Deposit may be made by telegraph when depositor conforms to the terms of deposit contract.*

*Deposit blanks are furnished free on application.

500. Affidavit Answering Nonresident Questions.

The affidavit which must be presented to the Tax Office should be carefully prepared and contain the particular information asked for, and be accompanied with the papers required in said questions.

501. Common Mistakes in Preparing Affidavit.

The most frequent omission from the affidavit is the certificate numbers evidencing shares of stock and registry numbers of bonds, and the failure to state the class of stock, viz., whether preferred, common, first preferred, second preferred or whatever class of stock is intended for transfer.

Another frequent omission from the affidavit is the ages, as of the death of decedent, of all annuitants and tenants for years or life. As well as failure to attach copy of will or table of heirship.

502. Delay.

The failure to prepare affidavit promptly, or omission to furnish the particular information and papers required will inevitably cause delay in obtaining consents.

Affidavits are examined by the Tax Department the same day they are received and where no tax appears to be due, consents are issued immediately.

**503. Section 11. In General. Duty of Lawyer.
 Investigation. Appraisement. Evidence.
 Special Guardian. Appraiser's Report.
 Order of Tax. Tax Receipt. Appeal to
 County Court. Appeal to Supreme Court.**

When an attorney has engaged his services to an executor, administrator, trustee, heir, beneficiary or transferee, it is as much his duty to properly advise the client of the liabilities and requirements of the tax law, as the administration law and other laws affecting the client.

Therefore when property is transferred by death, whether by will or intestate laws; or by deed or gift made prior to death within Section 1, an important question to be determined by said attorney is the liability and requirements under the inheritance tax law.

As stated in the preceding outline, the first contact with the tax law usually occurs by reason of Section 9, when a decedent had property or some interest therein, in the possession or under the control of a safe deposit company, trust company, bank, corporation, institution or person, or when a decedent owned shares of stock or registered bonds, and it is desired by the legal representative, or survivor or other claimant to have the same transferred on the books of the company.

After possession of such property has been secured, or sometimes during its retention by the depositary pending the issuance of consents for its transfer by the state officials, the matter of procedure for determination and payment of tax, or the process of clearing possible inheritance tax liens, arises.

It is to be noted that the County Judge, and not the County Court, is given the power by Section 11 to appoint an appraiser, and fix the tax.

This section has always been considered as providing

the method for determining the tax by investing original jurisdiction in the County Judge for that purpose. However, this view is not unanimous. It has been argued that a tax can be determined in an original proceeding before the court under Section 15, Law of 1909, and also by an original proceeding under Section 23, L. 1909. Also that postponed taxes may be assessed by a proceeding under Section 15. The latter question has been raised by a recent suit* in the County Court, wherein the trustees of a fund on which the tax was postponed prior to July 1st, 1909, subsequently petitioned the court to assess a tax on property vesting at the death of a life tenant, on the values fixed in the original appraisement and as of the original testator's death.

But beginning with and including the first tax case under the law of 1895, and continuing to the present day, taxes have been assessed by the County Judge under Section 11 of the L. of 1895, and Section 11 of the L. of 1909, through the method therein provided, and not by the County Court. (*People v. Mills*, 247 Ill. 147.)

(See cases under "County Judge.")

Section 15 has been held† to cover only delinquents after assessment under Section 11.

504. Appraisement Under Section 11.

Section Eleven provides: In order to fix the value of property of persons whose estates shall be subject to the tax, the County Judge, on application of any interested party, or upon his own motion, shall appoint an appraiser, who shall notify by mail all interested parties of the time and place he will appraise the property. At

*Estate of William D. Ewart, deceased, County Court No. 28733, appealed to Supreme Court.

†Opinion of Attorney General 369.

such time the appraiser shall determine the fair market value of the property appraisable. He may, with leave of the County Judge, subpoena witnesses and take evidence under oath. All of his proceedings must be reported in writing to the County Judge, who shall forthwith assess and fix the then cash value of all estates, etc., and the tax to which same are liable and shall immediately give notice by mail to all parties known to be interested therein.

**505. Legal Representative, Beneficiary and State
“Interested Parties.”**

The safe course for all parties liable to pay the tax either as executor, administrator or beneficiary, is to take action immediately after the death, in order to insure a completion of the appraisement before six months from the death, so that payment may be made within that period, and thereby secure a discount of five per cent. and avoid the payment of interest. (Sec. 3, L. 1909.)

As stated in the law, any interested party may petition the County Judge for an appraiser. The inheritance tax attorney or Attorney General should be served with notice of this action.

The Inheritance Tax Attorney, whenever he is advised a tax is due the State, moves for an Appraiser. Primarily any attorney may present to him an actual case and demand his attitude. If this is desired, it is necessary to present the following papers: True copy of application for letters, copy of will, table of heirship, inventory, or complete statement of property, real or personal; debts due at death, including mortgages. If a tax is shown, the Inheritance Tax Office moves for an appraisement.

506. Appraiser.

The Appraiser is selected and appointed by the County Judge, without recommendation or suggestion. He may appoint on his own motion or on petition. His appointment is made by the entry of a written order, which, together with the oath of the Appraiser, is filed with the Clerk of the County Court. Upon the appointment of the Appraiser, or before, the tax attorney mails to the attorney for estate, a letter requesting those papers which the County Judge requires to be contained in the Appraiser's report.

These papers are generally the will, table of heirship, inventory, bill of appraisement and application for letters. There is no provision in the law requiring attorneys, executors or administrators or other persons to furnish them. A fairly well established practice to furnish these papers has proved helpful to both the State and estate.

Said Appraiser, as soon after appointment as practicable, serves notice, by mail, upon all interested parties, which notice declares that a hearing will be held at a certain hour, day and place, for the purpose of valuing all property appraisable by reason of the death of decedent.

507. Hearing Rooms—Appraisements Had Therein.

In Cook County all hearings are held at the Appraiser's hearing room in the Inheritance Tax Office at Chicago. All cases are set and heard in their turn upon a trial calendar.

508. Hearing Before Appraiser — Nonresident Cases.

If the decedent died a non-resident of the State the only evidence necessary is the affidavit filed with the tax office in response to and containing the information and papers required in the printed non-resident questions, heretofore explained under Section 9. However, the executor or others conversant with the facts, may appear personally and testify.

509. Resident Cases.

The Appraiser presides at the hearing and the rules of procedure are similar to those before a master in chancery, except that the appraisement is in the nature of a common law proceeding. The executor or administrator must be present at the first hearing, and when necessary, at adjourned hearings. The presence of heirs or beneficiaries is required in many cases.

The State usually proceeds with the examination of the executor, administrator or other person and seeks to develop all material facts which are necessary or subject of inquiry under the law. The rules of evidence are the same as in a common law proceeding. It has been held by the County Court of Cook County that an Appraiser may make valuations without evidence and on his own inspection. This latter power is seldom resorted to. Both the State and estate may produce witnesses at the hearing to establish any material fact or facts.

Nearly every case presents a different situation. Different appraisements develop various conditions and questions. Therefore it is only practicable to state the facts which are uniformly necessary for the record in every estate. They are:

- 1st. Date of death of decedent and age at death.
- 2nd. Residence.
- 3rd. Testacy or intestacy.
- 4th. Introduction of a true copy of will and codicils, or table of heirship, if no will.
- 5th. Did decedent leave a husband or wife surviving? Age.
- 6th. Has surviving husband or widow accepted provisions of will?
- 7th. Is there an ante-nuptial or post-nuptial contract or contracts? They must be produced.
- 8th. Relationship of each and all beneficiaries to decedent, tracing such relationship; and State of incorporation and charter powers of educational, religious and charitable corporations.
- 9th. Ages, as of death of decedent of all annuitants and tenants for life or years.
- 10th. Identification of the total real estate in Illinois and the total personal or mixed property wheresoever situate.
- 11th. Determination by witnesses or otherwise of the market value of all property appraisable and of what is appraisable.
- 12th. No steps are taken as to value, amount or description of property until an inventory is filed in a court of probate. The State can force executor or administrator to file inventory. 238 Ill. 203.
13. Gifts and transfers under Section 1.
- 14th. Legal deductions, which include debts owing by decedent at death, secured by mortgage or otherwise; funeral expense; court costs; attorney's fees in administration; estimated executors' or administrators' commission. Deductions must be itemized, and each item must show the consideration for the debt and the name of the creditor. The fact that a claim has been allowed by a court of probate is not in itself ground for its allowance in an inheritance appraisal. The principal basis for allowance is that the deduction claimed constituted in law a clear liability of decedent at death.

510. Close Corporation Stock.

If there are no reliable sales on which the Appraiser may base a value of close corporation or unlisted stock, a statement of assets and liabilities is required, which should show the condition of company at decedent's death, and also the earnings of the company over a period of years prior to said death. These statements are generally withdrawn from the record on motion.

As an appraisement proceeds, many points of law arise. These should not be discussed during the trial, but the evidence necessary to develop the facts on which to base the legal contentions of the respective parties should alone proceed. After the evidence is closed, it is the practice in Cook County to argue all questions of law and value before the appraiser. Whether the appraiser, under the Illinois law, can determine questions, other than those of value, is not the subject of judicial determination in this state.

511. Record of Appraisement.

The evidence at the hearings of the appraiser is taken by a court reporter furnished by the Inheritance Tax Office. The evidence, when transcribed, together with all exhibits, is delivered to the appraiser at the close of the hearings. A report and draft order of tax is thereupon prepared (see forms) and left with the tax office, for the inspection of attorneys for the different parties. Notice is given to attorneys by mail of the time the report and order is ready for inspection.

After the expiration of the time appointed for inspection of the report, the same is presented to the County Judge, who approves same "forthwith" by the entry of an order of tax, and at the same time said County Judge,

pursuant to Section 11, mails his notice of tax to all interested parties. The form of notice of tax used in Cook County, which is mailed by the County Judge when he determines the tax, shows the date the order of tax was entered, the cash value of the beneficiaries' estate, and the tax assessed thereon. The notice further states that the tax draws interest until paid. This provision covering interest has no effect on taxes paid within six months from the death of decedent.

Cash value. The "cash value" of beneficiaries' estate has always been considered as meaning the value of the succession less the statutory exemption. Whether this is a correct interpretation of the meaning of said words, no view is expressed herein.

512. Objections to Appraiser's Report Cannot Be Argued Before County Judge.

If there are objections to any phase, part or finding of the report or order of tax, it is the holding of the County Judge of Cook County that said objections cannot be argued prior to entering the order of tax. (See cases under "County Judge.") The remedy is by appeal to the County Court, from the County Judge's Order of Tax. (See "Appeal.")

513. Inventories—Good Practice in Tax Matters.

The rules governing the filing of inventories in the Court of Probate and description of property therein is governed by the administration law and rules of said court.

The recommendations herein to executors and administrators and their counsel is by way of suggestion to avoid delays and insure prompt action in inheritance tax matters only.

514. Description of Property in Inventories.

It is suggested to executors and administrators that their inventories provide descriptions of property, in addition to that description required by the administration act, and the rules of the Court of Probate (when not in contravention of said rules), as follows:

In describing real estate, give frontage and depth; if improved, state character and stories high; rental value; street number, and between what streets. If vacant, frontage and depth; on what street; between what streets. If acres, the number of and whether subdivided; how many lots. If property customarily measured by the square foot, give number of square feet.

515. Stocks.

Certificate number and number of shares of stock represented thereby; the correct corporate name of the corporation without abbreviation; par value of shares and class of stock (preferred, first or second preferred, or common, etc.).

516. Bonds.

Correct name of corporation; serial number of each bond; class or kind of bond; par value; maturity, date of payment and rate of interest.

The foregoing information will, many times, save delay in determining the facts and values.

517. Insures Immediate Consent to Transfer.

The description of stocks and bonds as above in an inventory on which a tax has been paid, or on which a No Tax Order has been entered will insure an immediate issuance under Section 9 of the consent of the Attorney

General and State Treasurer to transfer the same. If the shares of stock and bonds have been described in the inventory without numbers, no consents can issue until an affidavit is filed with the tax office identifying the property by certificate or serial numbers, as the same on which the tax has been paid or declared free from lien.

518. Appraiser — Involuntary Appointment — Investigation by Tax Office.

If no action is taken by the legal representatives or beneficiary of property, either by referring the matter to the Inheritance Tax Attorney or by petitioning the County Judge, the estate or property is investigated by the tax office through its investigation department.

The records of the Probate Court, recorder's office and the files in the office of the joint representative of the Attorney General and State Treasurer are examined, as well as other investigations made, and the value of property discovered is tentatively determined, and if a tax is disclosed the case is referred to the County Judge for disposition.

Few investigations are completed within the discount period. Voluntary appraisement and deposit cases are heard first on the appraisers' trial calendar. Involuntary cases are placed at the foot of the calendar.

519. Life Estates and Remainders—How Value Determined.

The Appraiser, after determining, as by law directed, the value of the property, by practice, passes upon, by way of recommendation the deductions presented, the devolution or distribution of the net property for taxation, the exemptions and rates of tax; and where life estates,

terms of years, remainders and annuities are created, the Appraiser determines the value as of the death of testator. The value of an estate or annuity for life or years is determined on mortality tables. The Carlisle Table of Mortality, which follows, being the one used, according to practice. (*Marshall v. Marshall*, 252 Ill. 568.)

520. Value of an Annuity of One Dollar on a Single Life According to the Carlisle Table of Mortality.

AGE.	5%	AGE.	5%	AGE.	5%
1....	13.995	31....	14.617	61....	8.712
2....	14.983	32....	14.506	62....	8.487
3....	15.824	33....	14.387	63....	8.258
4....	16.271	34....	14.260	64....	8.016
5....	16.590	35....	14.127	65....	7.765
6....	16.735	36....	13.987	66....	7.503
7....	16.790	37....	13.843	67....	7.227
8....	16.786	38....	13.695	68....	6.941
9....	16.742	39....	13.542	69....	6.643
10....	16.669	40....	13.390	70....	6.336
11....	16.581	41....	13.245	71....	6.015
12....	16.494	42....	13.101	72....	5.711
13....	16.406	43....	12.957	73....	5.435
14....	16.316	44....	12.806	74....	5.190
15....	16.227	45....	12.648	75....	4.989
16....	16.144	46....	12.480	76....	4.792
17....	16.066	47....	12.301	77....	4.609
18....	15.987	48....	12.107	78....	4.422
19....	15.904	49....	11.892	79....	4.210
20....	15.817	50....	11.661	80....	4.015
21....	15.726	51....	11.410	81....	3.799
22....	15.628	52....	11.154	82....	3.606
23....	15.525	53....	10.892	83....	3.406
24....	15.417	54....	10.624	84....	3.211
25....	15.303	55....	10.347	85....	3.009
26....	15.187	56....	10.063	86....	2.830
27....	15.065	57....	9.771	87....	2.685
28....	14.942	58....	9.478	88....	2.597
29....	14.827	59....	9.199	89....	2.495
30....	14.723	60....	8.940	90....	2.339

AGE.	5%
91.....	2.321
92.....	2.412
93.....	2.518
94.....	2.569
95.....	2.596
96.....	2.555
97.....	2.428
98.....	2.278
99.....	
100....	1.624

521. How to Ascertain Present Value of Annuity or Estate for Life—And Remainder.

If A, age fifty years, is given a life estate in property of the value of \$10,000.00, remainder to B, the method of valuation of the life estate and remainder is as follows:

First is determined the income for one year at five per cent. which equals \$500.00. By reference to the mortality table, it is seen that the present value of One Dollar for the entire expectancy of life of a person fifty years of age (A's age) is \$11.66. It follows that if the present value of \$1.00 for A's expectancy is \$11.66, the present value of \$500.00 per year for A's expectancy is $500 \times \$11.66$, or \$5,830.00. \$5,830.00 is therefore the present taxable value of A's life estate in property of the value of \$10,000.00.

The present value of B's remainder as of the death of testator is the difference between A's life estate and the value of the trust fund (\$10,000—\$5,830=\$4,170.00).

\$4,170.00 is the taxable value of B's remainder. (See *People v. Nelms*, 241 Ill. 571.)

The rate of five per cent. is provided by Sec. 2, L. 1909, as the percentage basis for determining the value of expectancies or annuities.

522. Valuation of Annuity for a Fixed Period of Years.

When an annuity is created for a fixed period of years, for instance—an annuity of \$500 to C for ten years, the mortality tables are of no assistance and cannot be used. The Appraiser must then use a fixed annuity table.

To determine the value of a fixed annuity for a period of years stated, it is necessary only to find the present value of money for a certain period without regard to mortality. The fixed annuity will not cease with C's death, but the life estate would.

The fixed annuity table used in determining an annuity as last described is as follows:

ILLUSTRATION: Annuity of \$500.00 to C for ten years.

Present value of \$1.00 per year for ten years is found by referring to the following table to be \$7.7217. Multiply the total annuity (\$500.00) by the present value of \$1.00 (7.7217) and the result is the present value of \$500.00 for ten years, viz: $500 \times \$7.7217 = \$3,608.50$.

523. Fixed Annuity Table.

Yrs.	5 per cent.	Yrs.	5 per cent.
1	.9524	16	10.8378
2	1.8594	17	11.2741
3	2.7232	18	11.6896
4	3.5460	19	12.0853
5	4.3295	20	12.4622
6	5.0757	21	12.8212
7	5.7864	22	13.1630
8	6.4632	23	13.4886
9	7.1078	24	13.7986
10	7.7217	25	14.0939
11	8.3064	26	14.3752
12	8.8633	27	14.6430
13	9.3936	28	14.8981
14	9.8986	29	15.1411
15	10.3797	30	15.3725

Yrs.	5 per cent.	Yrs.	5 per cent.
31	15.5928	56	18.6985
32	15.8027	57	18.7605
33	16.0025	58	18.8195
34	16.1929	59	18.8758
35	16.3742	60	18.9293
36	16.5469	61	18.9803
37	16.7113	62	19.0288
38	16.8679	63	19.0751
39	17.0170	64	19.1191
40	17.1591	65	19.1611
41	17.2944	66	19.2010
42	17.4232	67	19.2391
43	17.5459	68	19.2753
44	17.6628	69	19.3098
45	17.7741	70	19.3427
46	17.8801	71	19.3740
47	17.9810	72	19.4038
48	18.0772	73	19.4322
49	18.1687	74	19.4592
50	18.2559	75	19.4850
51	18.3390	76	19.5095
52	18.4181	77	19.5329
53	18.4934	78	19.5551
54	18.5651	79	19.5763
55	18.6335	80	19.5965

524. Appeal to County Court.

"Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such appraisement or assessment on paying or giving security satisfactory to the County Judge to pay all costs, together with whatever taxes shall be fixed by said Court."

"The making of such assessment" is accomplished by the entry of the County Judge's order of tax approving the Appraiser's report and fixing the tax. The practice is for the party appealing to present a petition (see

forms) to the County Judge, setting up the objections to the appraisement and County Judge's order, upon which petition the court allows the appeal if pertinent objections are alleged.

At the same time a bond (see forms) in twice the sum of the tax is presented for approval, unless the tax has been paid to the County Treasurer, in which case the bond is usually in the sum of \$250.00 to cover costs.

Sureties should be brought into court for examination at the time of presenting bond. The County Court of Cook County has held that the date of entry of the County Judge's order of tax is the time the sixty day limitation for appeal begins and also that the bond must be approved within this period.

An appeal case in the County Court is a common law action. Exceptions must be preserved and the procedure is the same as law actions. The trial is *de novo* (*People v. Mills*, 247 Ill. 620).

525. Appraisers' Report Used as Evidence.

In the average appeal, the Appraiser's report sets forth all the material facts, and the same, or a certified copy, is offered as the only evidence.

A copy of the report should be used whenever the case goes to the Supreme Court. The original report is not recorded and should be kept in the clerk's office, as it may contain information for a future appraisement of property passing by a power or otherwise, which might be indispensable to the State. Although the law allows withdrawing the Supreme Court record containing this report, it is better available in the office of the Clerk of the County Court.

Either side may produce witnesses to prove material facts not contained in the Appraiser's report, or, if a

question of value is in dispute, the report may be offered and the objectionable parts either excluded or received subject to objection.

Where the report can be used as covering all the formal proof, it is a great saving of time to the Court to receive same or a copy thereof and mark the objectionable or disputed parts as received under objection.

Where the report is to be used as evidence, appellant in opening the appeal case, begins his record by offering the report, or so much as is necessary, with leave to withdraw on substitution of an authenticated, examined or certified copy. If the regularity of Appraiser's appointment is questioned the order of appointment and oath of Appraiser may be material. The order of tax appealed from is a matter of record. Opinions differ on the necessity of offering the same as evidence. The better opinion seems to be that it is primarily a part of the record. The trial proceeds as in other suits at law.

526. Appeals to Supreme Court.

An appeal from the judgment of the County Court in an Inheritance Tax case goes direct to the Supreme Court. (*Re Sholem*, 238 Ill. 203.) The rules and procedure governing such appeals are the same as in suits at law.

527. When any person interested in any property in this state, which shall have been transferred within the meaning of this act shall deem the same not subject to any tax under this act, he may file his petition in the County Court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the County Treasurer and all persons known to have or claim any interest in said property shall be made parties. The County Court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine: but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the County Court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the Supreme Court of the state by the County Treasurer, or Attorney General of the state, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the County Court.

528. Proceeding to Quiet Question of Taxability—In General.

It is frequently uncertain or disputable whether a tax is due or has accrued to the State. This uncertainty should be eliminated at once, so that the property transferred may be commercially or merchantably clear, either

by determining the amount of the tax, if any, and the payment of same, or, by an adjudication finding that there is no tax.

This uncertainty is caused by manifold questions, both of law and fact, nearly all of which grow out of the question whether the value of the property is less or more than the statutory exemptions of the beneficiaries. To settle this basic proposition, it is necessary, among other things—

1st. To construe the will, interpret a deed or trust or other transfer, determine the heirship, etc., ascertain who are the beneficiaries and what amounts or proportions they legally receive, and if there are contingent interests created, whether Section 25 operates to make an arbitrary distribution for taxation at the highest rate, or whether by the creation of a power of appointment, it may be necessary to postpone the determination of a tax.

2nd. It is not always clear whether the statutory exemption is allowable—as in the case of a claim that decedent stood in the acknowledged relation of parent to the beneficiary.

3rd. Residence; date of death; and the meaning of "Property in this State" are material.

4th. Determination of the fair market value of the real or personal property presents problems for solution.

The many situations that may arise cannot be anticipated.

There are apparently two methods offered by the Inheritance Tax Law to quiet the question of tax liability and liens—Section 23 and Section 11.

A letter from a State or County officer giving an opinion that no tax is due is of no legal effect. The only determination of the question is by order of the County Judge or Court.

In 1901 there was added to the Law of 1895 what is known as Section 21½ which was without substantial change incorporated in the Law of 1909 as Section 23. It provides in part, as follows:

“When any person interested in any property in this State which shall have been transferred within the meaning of this Act shall deem the same is not subject to any tax, he may file a petition in the County Court of the proper County and such Court shall determine whether there is or is not a tax.”

The County Treasurer shall be made a party and the Attorney General, who is not expressly made a party, may appeal from the judgment of the Court; in case there is no tax the Court may so decree.

The apparent intent of this Section is, among other things, to foreclose the State, by the entry of a “no tax” judgment from forever raising the question of taxability of the property and subject matter adjudicated. The County Treasurer, under this Section, is intended to be designated as the representative of the State.

A large number of cases have been commenced under this section, in which no tax orders have been entered, and the practice, procedure, form petition and decree of No Tax are hereinafter given.

529. The Other Section Providing Remedy to Quiet Question of Taxability.

There is another section which affords the remedy contemplated in Section 23; that is Section 11* wherein the

*It is the author's personal view that Section 11 offers a much safer and more certain remedy to secure the foreclosure of the State on the question of taxability and lien than Section 23. Although a proceeding under Section 11 may be more expensive, by reason of the County Judge refusing to act where a tax is not apparently due, because the appraiser's services are payable only out of the tax collected in the particular appraisalment, yet the object of the moving party is to secure an irrefragable clearance of tax liens or liabilities, and an additional but inconsiderable expense on account of costs might be wisely incurred.

County Judge, by a legal procedure which has the prestige of judicial interpretation, appoints an appraiser, on whose report, the said County Judge determines whether there is or is not a tax.

530. Procedure for Determining Taxability Under Section 11.

The procedure for determination of taxability, and securing a no tax order, under Section 11 is the same as the procedure for assessing a tax, with the exception that a guaranty is required of the moving party to pay the costs of the proceeding. Costs must be guaranteed where it is not clear that there is a tax, in order to insure payment of the appraiser and his necessary disbursements.

531. Section 23. Property "in This State."

This covers all property of whatsoever kind, constructively or tangibly within this state (see cases under Section 1 for decisions), whether owned by a resident or non-resident of this state. Property that is comprehended within the meaning of Section 1 would be within Section 23, as well as property covered by Section 9.

532. Transferred Within the Meaning of This Act.

The meaning of the phrase "property in this state" or "within this state" is interpreted in *People v. Griffith*, 245 Ill. 532 (decision under Law of 1895), as follows:

"The succession to the ownership of property being by permission of the state, the state can impose conditions in granting such privilege or permission. The Courts therefore have upheld the imposition of an Inheritance Tax whenever the state has jurisdiction of the beneficiary or the subject matter, regardless of the actual location of the per-

sonal property or the domicile of the decedent. * * * The liability of property to an inheritance tax does not depend upon the location, but upon whether the beneficiary came into its possession through the exercise of a privilege conferred by the State".

In *National Safe Deposit Company v. Stead, Attorney General*, 250 Ill. 584*, the Court said:

"It is clear, therefore, that the State has an interest in every estate that is subject to the payment of an inheritance tax, and in all such proceedings the Attorney General or some other designated officer, is the representative of the State. (*People v. Sholem*, 238 Ill. 203). We think, therefore, that the conclusion, from what has been said, logically and necessarily follows that where a lessee of the appellant dies leaving property in one of the safety deposit boxes or safes of the appellant, the State, by its proper representative, has the right to be advised whether or not it shall ultimately be established that it has an interest in such property and of the time when the property will be surrendered and delivered by the appellant to the personal representative, heir or devisee of the decedent, for the purpose of being informed as to whether the succession to such property is subject to an inheritance tax. If such were not held to be the law, all moneys, securities or other valuables held by appellant in its safety deposit boxes or safes for its lessees, upon the death of a lessee might be transferred to parties other than the State or its representatives and immediately removed to a foreign state or country or concealed or otherwise disposed of, and the true owner of the property—in part, that is, the State—be deprived of all right to enjoy the use and possession of such property".

533. Interested Party.

An interested party may be the administrator, executor, trustee, heir, beneficiary, transferee, donee, purchaser, Attorney General or Inheritance Tax Attorney.

*Writ of Error to United States Supreme Court.

534. Petition—Form—Allegations — Proof Under Section 23.

The requirements of the County Court are that all facts material of proof in a no tax proceeding under Section 23 shall be alleged or negatived in a petition, the prayer of which is for a judgment of no tax. The allegations must be set forth in systematic order. A form petition showing general allegations, and the order in which they occur, is hereinafter set forth for the use of parties electing to proceed under said section.

535. Description of Property in Copy of Inventory Made a Part of Petition.

All real estate should be described (in addition to the legal description) by street numbers, if any—and the frontage and depth of lot, improvements and income must be shown. If not contained in the inventory, a statement referring to the inventory item giving such information must be attached to the petition.

Shares of stock and bonds must be described by certificate and serial numbers.

536. Form Petition for No Tax.

STATE OF ILLINOIS }
 COUNTY OF COOK } ss

IN THE COUNTY COURT OF COOK COUNTY.

TO THE TERM OF SAID COURT.

In the Matter of the Estate of
 JOHN DOE, deceased.

No.

PETITION FOR NO TAX.

TO THE HONORABLE JOHN E. OWENS,*

Judge of the County Court of Cook County.

Your petitioners, George Doe and Charles Brown, as executors, by John Smith, their attorney, respectfully show unto your Honor that said John Doe departed this life testate on the 10th day of May, A. D. 1909, a resident of the City of Chicago, County of Cook and State of Illinois; that the will and codicils of said decedent have been, without objection, (or if objection has been made to probate or otherwise, state the facts), duly admitted to probate in the Probate Court of Cook County, Illinois, and that your petitioners qualified thereunder as executors and are now acting as such. A true copy of said last will and codicils are hereto attached, marked EXHIBIT "A" and made a part of this petition.

Your petitioner further shows unto your Honor that the decedent died possessed of personal property and rights and interests therein tangibly situate in the States of Illinois, New York, Pennsylvania, California, Iowa and Florida, all of said personal property is specifically described in amount and kind in an inventory filed by executor in the Probate Court of Cook County, Illinois; a copy of which is herewith attached to this petition as EXHIBIT "B" and made a part thereof; that said decedent died

*Judge of the County Court of Cook County—elected November, 1910.

seized of real estate situate in the states of Wisconsin and Illinois; a description of the real estate situate in the State of Illinois is specifically set forth in said inventory heretofore referred to. Your Petitioner deposes that EXHIBIT "B" contains a complete list and description of all real estate located in the State of Illinois of which decedent was seized at the time of death, and that it further contains a complete list and description of all personal property, rights and interests therein and evidences thereof, wherever located, of which decedent died possessed.

Your Petitioner further represents that the total value of the real estate in Illinois does not exceed \$74,000.00; and that the total gross value of all personal property, interests and rights and credits does not exceed \$6,000.00, making a total gross estate of \$80,000.00.

That the real estate in Illinois was chargeable at the time of death of decedent with a total mortgage indebtedness of \$3,000.00, distributed upon the property as set forth in said EXHIBIT "B". That the other indebtedness of decedent owing at death is as follows: \$2,000.00 borrowed by decedent from the Central National Bank of Chicago, and evidenced by decedent's note for that amount. The foregoing indebtedness is admitted to be due by executors and will be paid.

There will also be incurred the general charge of administration fees and costs, together with executors' and attorney's fees, which your Petitioner has not estimated but prays may be computed if your Honor deems it necessary to arrive at a more correct amount of the net distribution of the estate. (Funeral expense is deductible as well as household bills, etc., unpaid at death—but must be itemized if claimed as a deduction).

Your petitioner further represents that the debts above described should be deducted as follows: \$2,000.00 from the gross personal estate, leaving \$4,000.00 for distribution; \$3,000.00 from the gross value of real estate, leaving \$71,000.00 for distribution or a total of \$75,000.00 net assets.

Your petitioner further shows that said decedent left him surviving as his only heirs at law and next of kin, Mary Doe, his widow, who was thirty-five years of age at the date of decedent's death; George Doe twenty-two years of age, and Margaret Doe, fourteen years of age, children of said decedent, which facts are further shown by proof of heirship made in the Probate Court of Cook County, a copy of the Table of Heirship being hereto attached and marked EXHIBIT "C" and made a part of this petition.

(If decedent adopted any child or children, so state and attach copy of decree of adoption).

That said widow (who has accepted the will) and children are now living and take as beneficiaries under the will and codicils in the amounts as herein-after stated.

(If children of an adopted child of decedent take property, trace their relationship by referring to the adoption of beneficiary's parents).

Your petitioner further represents that the cash legacies exceed the net personal property, but that by the terms of the codicil said legacies are chargeable to the real estate.

Your petitioner further shows that all the surviving beneficiaries named in the will and codicils succeeding to the property hereinabove referred to, together with their respective legal relationships to decedent and the value of their respective successions are as follows:

(The relationship must be carefully traced when beneficiary is further removed than father, mother, brother, sister, widow, husband and children.

	Value of Succession.	Statutory Exemption.	Tax.
MARY DOE, widow of decedent, age 35. By third clause of will, life estate in undivided one-third of real estate, present value .....\$12,185.29			
Award 1,000.00			
Fifth clause of will, one-half of personal property..... 1,500.00	<u>\$14,685.29</u>	\$20,000.00	None
GEORGE DOE, son of decedent, by Sixth clause of will, one-half of personal property\$ 1,500.00			
One-half of residue..... 14,707.36	<u>16,207.36</u>	20,000.00	None
MARGARET DOE, daughter of decedent, by residuary clause, one-half of residue.	14,707.35	20,000.00	None
AUGUSTUS DOE, brother of decedent, by Sixth clause and Second clause of first codicil.....	10,000.00	20,000.00	None
CHARLES DOE, nephew of decedent, being son of Henry Doe, brother of dece- dent, by Seventh clause and second codicil	2,000.00	2,000.00	None
GRACE MOHR, grandniece of decedent, be- ing daughter of Alice Mohr, who was the daughter of Katherine Wood, a sister of decedent, by second codicil (In case of intestacy show death of Alice Mohr and Katherine Wood)...	2,000.00	2,000.00	None
JOHN GLASS, stranger in blood, first co- dicil	400.00	.....	None
THE OLD PEOPLE'S HOME, a corporation organized under the laws of Illinois for charitable purposes and without the right to make dividends or dis- tribute profits or assets among its members, trustees or shareholders. By ninth clause of will, as increased by fourth clause of second codicil..	5,000.00	Exempt under Sec. 2½, L. 1895, if tes- tator died before July 1, 1909, or Sec. 29, if testator died on or after July 1, 1909.	
DOROTHY DOE, administratrix of the es- tate of William Doe, a brother of de- cedent, and beneficiary under the tenth clause of will of decedent. William Doe survived decedent, but died on June 1st, 1909, intestate, Letters having been issued to his widow, Dorothy Doe.....	10,000.00	20,000.00	None
TOTAL	<u>\$75,000.00</u>		

Your Petitioner further states that Jacob Doe named in the twelfth paragraph of will died prior to death of decedent.

Your Petitioner further states that said decedent was actively engaged in the retail hardware business up to his last illness, which lasted some three months until death; the immediate cause of death being diagnosed as Brights Disease, from which he had suffered intermittently during the last ten years of his life.

That within thirty days of his death, while suffering as aforesaid, he made a gift of \$10,000.00 to his sister, Amanda Doe, who is not a beneficiary under his will, but other than this gift, said decedent did not during life, and while sick or injured, make any gift or gifts of money or property (real or personal) or any interest therein.

(In case decedent made a gift while sick, allege all the facts).

(In case decedent made no gifts, negative the fact in the language of this paragraph beginning with the word said "decedent" in the line thereof).

Your petitioner further states that said decedent did by warranty deed dated June 1st, 1896, transfer to his brother Michael Doe, a two-story frame cottage at 46 Blank Street, worth now \$2,500.00, from which decedent received the rents until his death. Michael Doe is not a beneficiary in the will or codicils; but other than this, said decedent did not during life transfer, assign or part with any money or property (real or personal) or any interest therein, reserving any part thereof or income therefrom until death; nor did he indirectly receive any income or rewards from any such transfer. (In case decedent made a transfer or transfers in his lifetime, even though he lost all title and ownership in the property transferred, but that he decedent, received rewards, income or interest from said property or from the transferee, whether by written agreement or oral arrangement, you are bounden under the rules of the Court to set forth fully the true facts for the Court's consideration).

(In case decedent made no transfers, negative the fact in the language used in this paragraph, beginning with the words "said decedent" in the line thereof).

(Do not join the gift and transfer paragraphs in one. They are separate subject matters and should be covered in separate paragraphs).

Your petitioner therefore prays that Your Honor will enter an order herein finding that the property, real, personal and mixed, passing to the beneficiaries under the will and codicils of the said decedent and the transfers and gifts made in his lifetime, is and are not liable for any inheritance tax under the laws of the State of Illinois; and that said order also contains the finding that the respective successions of all the beneficiaries to all property passing by will, codicils, gifts and transfers, are not subject to, or liable for, any inheritance tax under the Law of this State.

Your petitioner also prays that your Honor will appoint a *guardian ad litem* in this proceeding to act for and represent Margaret Doe, the minor child of said decedent, as a party defendant, and that said *guardian ad litem* so appointed make answer to this petition, but not under oath, etc.

Your petitioner makes as County Treasurer of Cook County,, Inheritance Tax Attorney for Cook County, parties defendant to this proceeding and shows that he has served said County Treasurer and said Inheritance Tax Attorney with copies of this petition and asks that they and each of them shall make answer hereunto, but not under oath, and in default thereof that the order above prayed may be entered instanter.

May it please the Court to grant the writ of summons directed to the Sheriff of said Cook County commanding him that he summon the defendants, Inheritance Tax At-

torney, (by name), County Treasurer of Cook County, Illinois, (by name), and (other defendants) to appear before this Court on the first day of the Term thereof to be held at the Court House at Chicago, in the County of Cook aforesaid, then and there to answer this petition.

.....,
As Executors.

George Doe, being first duly sworn, on oath states that he resides at 1415 Blank street, in the City of Chicago, Illinois; that he has subscribed the foregoing petition and that the allegations therein contained are true.

(Signature) GEORGE DOE.

Subscribed and sworn to this day of
....., A. D. 1911.

.....,
Notary Public.

Charles Brown, being first duly sworn, on oath states that he resides at 1234 Blank street, in the City of Chicago, Illinois; that he has subscribed the foregoing petition and that the allegations therein contained are true.

(Signature) CHARLES BROWN.

Subscribed and sworn to this day of
....., A. D. 1911.

.....,
Notary Public.

537. Petition for No Tax—Nonresident Decedent.

If an affidavit has been filed with the Attorney General or Inheritance Tax Attorney fully covering the information required in the printed list of non-resident questions, and there appears no tax due, yet it is desired because of the ownership of real estate, or of the nature or character of the personal property, to have a No Tax order en-

tered, it is not necessary to follow the form of the petition hereinbefore set forth, because the aforesaid affidavit will contain the necessary facts on which to base an order of No Tax. The non-resident questions are intended to cover the field of appraisable property under the law of this State.

Therefore a short petition by counsel for the moving party, reiterating the date of death, residence of decedent, distribution for taxation, and prayer for summons, etc., with an examined copy of the affidavit and exhibits attached, is sufficient.

538. Petition for No Tax—Relation of Parent to Beneficiary.

If a claim is made for the \$20,000.00 exemption under Section 1, on the ground that the decedent stood in the acknowledged relation of a parent, or that some other exemption, deduction or claim renders the property transferred not taxable, the facts necessary to establish this relationship or other claim must be alleged and proven. The burden of proof is upon the person or corporation claiming the property free from tax.

539. Order of No Tax.

The order of No Tax, under Section 23, is usually in the following form:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE COUNTY COURT OF COOK COUNTY.

In the Matter of the Estate of } No.
JOHN DOE, deceased. } ORDER OF "No TAX."

This cause coming on to be heard on the petition of George Doe and Charles Brown, as executors of the last will and codicils of John Doe, deceased, praying for an

"Order of No Tax," finding all the property appraisable by the death of said decedent not subject to lien or liens, nor liable for inheritance taxes under the Inheritance Tax Laws in force in this state; and finding the successions, rights and interests of the beneficiaries, donees and transferees not taxable thereunder.

And it appearing that County Treasurer, was duly served with summons (or by appearance, as the case may be), and that due notice of the hearing of this cause was regularly served upon said County Treasurer; and it further appearing that said County Treasurer is in Court.

And it further appearing that Inheritance Tax Attorney, was duly served with summons (or is in Court by appearance as the case may be), who was present in person at all hearings hereof and at the presentation of this order or decree, and that all parties to this proceeding are in Court;

And it further appearing that the Court has plenary jurisdiction in the premises, the Court finds:

That decedent, John Doe, died testate, domiciled in the City of Chicago, County of Cook and State of Illinois, and that his will and codicils were admitted to probate in said County, without objection—that said petitioners, George Doe and Charles Brown, qualified as executors and are still acting as such.

That on due inquiry the total net property appraisable by reason of the death of decedent is: Personal, \$4,000.00; real, \$71,000.00; total, \$75,000.00.

That the distribution of said property under the will and codicils of decedent for the purpose of appraisement and to disclose the taxability of the successions thereto, together with the statutory exemptions claimed, as al-

leged in said executors' petition, is hereby approved and confirmed.

That said decedent did not, prior to death, make any gift or gifts in contemplation of death that are taxable under the Inheritance Tax Law in force in this State.

That said decedent did not, prior to death, make any transfer or transfers intended to take effect in possession or enjoyment at or after such death, that are taxable under the Inheritance Tax Law of this State.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there is no Inheritance Tax due upon the succession or successions of any or either of the beneficiaries under the will and codicils to the property described in the copy of the inventory made a part of the petition of executors, and that the real, personal and mixed property described therein is free and clear of any and all liens on account of Inheritance Taxes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that decedent made no gift or gifts in contemplation of death, and that decedent made no transfer or transfers intended to take effect in possession or enjoyment at or after such death that are taxable under the Inheritance Tax Law of this State.

.....,
Judge of the County Court of Cook County.

Entered this day of, A. D.

SUGGESTION TO LAWYERS.

All orders of "tax" or "No Tax" being spread of record in the office of the Clerk of the County Court, it is considered good practice to set forth in orders of No Tax (or tax), by legal description, the real estate involved. This makes a permanent record of the real

estate which it is desired to relieve of the question of lien.

If it is ultimately desired to obtain under Section 9, Inheritance Tax Laws 1909, the consent of state officials for the transfer of specific personal property, or evidences thereof, such as shares of stock or bonds, it may be well to describe the same by certificate or serial numbers.

540. Entry of No Tax Order.

The Law provides that the County Treasurer shall be made a party defendant. The rules of the County Court of Cook County require that the Inheritance Tax Attorney and County Treasurer shall be served with notice of the hearing on the petition, and if the order is entered without a hearing that the order shall be O' K.'d by the Inheritance Tax Attorney and notice of the time of presentation given the County Treasurer.

There are two methods of disposing of Petitions for No Tax.

First, by hearing before the Court, at which witnesses must be produced to establish all the allegations of the petition.

Second, by submitting the petition and draft order, together with copies thereof, to the Inheritance Tax Attorney, who makes an investigation of the facts, values, deductions and other material matters, and if satisfied there is no tax due by reason of decedent's death, usually O. K.'s the order.

The petition and O. K.'d order are thereupon presented to the County Court on motion of course, notice being given to the County Treasurer of the time of pres-

entation, and if the Court considers the order proper and correct, enters the same without a hearing.

The order should either be O. K.'d by the County Treasurer or notice of the time and place of presentation of said order should be served him as well as on all defendants, so that any objection to the entry of such order may be heard.

CHAPTER XXIX.

ATTORNEY GENERAL OPINIONS.

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| 543. State's Attorney — Fees in General — Deposit to stop Interest.
544. Interest—Runs until Tax is Paid.
545. Deductions — When Expense for Monument cannot be Deducted.
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543. State's Attorney—Fees in General—Deposit to Stop Interest.

In reply to your letter of March 6th, receipt of which has been heretofore acknowledged, in which you request me to render you an opinion as to your duties as State's Attorney in the matter of the collection of inheritance taxes in your county and your compensation for services performed in relation thereto, will say that your questions hereinafter set out will be answered together, thus avoiding useless repetition.

1. "If a State's Attorney commences a proceeding for the assessment of an inheritance tax by filing a petition in the County Court and within six (6) months after the death of decedent, and in cases where no steps have been taken by the Executor or administrator of the estate for the assessment of the said tax, and the State's Attorney appears for The People and the Court finds an Inheritance Tax due against said estate, under such circumstances is the State's Attorney entitled to a reasonable attorney fee to be fixed by the Court in such case?

2. "Is it the duty of the State's Attorney to appear for The People in all cases of Inheritance Tax matters?

3. "Can a State's Attorney file a petition in County Court immediately after the death of decedent for the purpose of the assessment of an inheritance tax on an estate subject to tax, or must he wait six (6) months to allow the executor or administrator to have the same done voluntarily?"

There are two statutory provisions which fix the duty of State's Attorneys in inheritance tax matters. Paragraph 2 of Section 5 of Chapter 14, Hurd's Revised Statutes, 1909, provides, among other things, that it shall be the duty of the State's Attorney in each county "to prosecute actions and proceedings for the recovery * * * Revenues * * * accruing to the State," and Section 16 of the Inheritance Tax Act provides:

"When it appears that any tax is due and unpaid under this Act and the persons, institutions or corporations liable for said tax have refused or neglected to pay the same, it shall be the duty of the State's Attorney in counties of the first and second class * * * if he have proper cause to believe a tax is due and unpaid, to prosecute the collection of the same in the County Court of the proper county in the manner provided in Section 15 of the Act for the enforcement and collection of such tax."

The quotation from Chapter 14, in my opinion, requires and I consider it the duty of the State's Attorney to appear for and represent the State in all proceedings pertaining to the ascertainment of the amount due and the collection of inheritance taxes. That such proceedings involve the revenue and that the State is vitally interested therein is too plain a proposition to require citation of authority.

The portion of Section 16 of the Inheritance Tax Act

quoted makes it the duty of the State's Attorney to prosecute the collection of the tax, when the amount thereof has been ascertained and assessed in the manner provided by statute, but the tax has not been paid. As I construe this section, there is but one contingency when the State's Attorney is required or authorized to act thereunder, and that is where the proceedings to assess the tax have culminated in an order fixing the amount thereof and payment has been refused or neglected to be made by the person or corporation whose duty it is to pay the tax; it then becomes the duty of the State's Attorney to enforce the collection of the amount due by the method outlined in Section 15.

The County Judge, by Section 11, is given full power to appoint an Appraiser upon his own motion or of any party in interest. Under this section, the State's Attorney is authorized to present a petition on behalf of the State, asking for the appointment of an Appraiser, and it is his duty to do so if it appears that the administrator, executor or person whose duty it is primarily to do so does not intend to comply with the law. Upon appointment, it becomes the duty of the Appraiser to ascertain and report to the County Judge the fair market value of the property of the decedent, from which the County Judge fixes the amount of the tax, if no appeal is taken; and the amount so fixed, or, if appeal is taken, eventually assessed, becomes due and payable. Under the several provisions of the statute designed to prevent the distribution of the estate or the removal of it from the jurisdiction of the assessing officers, liens are created, and the executors, administrators, trustees, and even banking houses and like institutions are required, in dealing with the property of the decedent, to protect the State against the loss of the tax, or, in the event they

do not, are made personally liable for the tax. Therefore, under the provision of Section 5, for instance, after the tax has been assessed, it may appear that the administrator, executor or trustee has distributed the estate and has not retained the amount due the State as inheritance tax; in such case, Sections 15 and 16 provide the method of procedure for the collection of the tax from such executor administrator or trustee.

I am unable to see any reason for holding that Section 11 does not cover every case where the necessity appears for the appointment of an appraiser, either by voluntary or involuntary proceeding, and it seems that the procedure provided for by Sections 15 and 16 is not adapted to the ascertainment of the amount of the tax due and no reason appears for providing a different method of appointing an appraiser under one state of facts than the other. I, therefore, am of the opinion that the method of appointing appraisers as outlined in Section 11 applies to all cases and that Sections 15 and 16 provide the method of collecting the tax where payment is refused or neglected after it has been ascertained by the method and machinery provided by the act for so doing.

State's Attorneys have never been allowed compensation for appearing for and representing The People in matters involving the revenue, or, rather, it may be said that the compensation they receive from the State is intended to include their services in such matters. No reason appears as to why the rule should be different in proceedings relative to the revenue raised by the inheritance tax than in other matters involving the revenue unless an exception is made by the statute under consideration. The only thing relative to the fees of the State's Attorney is in Section 16 and is—

“in every such case said court shall allow as costs

in said case such fees to said attorney as the court may deem reasonable."

It is, therefore, my opinion, that in cases brought to recover the amount of the tax, due and unpaid, after the same has been ascertained and fixed, the court may fix and allow a reasonable attorney fee to be taxed as costs against the defendant, and that in all other procedure for the assessment and collection of the tax, there being no fee provided therefor by statute and the revenue being exempted by express enactment from those matters upon which State's Attorneys are entitled to commission, these services must be considered to be among those for which the amount paid them from the State Treasury is deemed to compensate. Attorney General Illinois Report for 1910, 436.)

I have no question of the right of the State's Attorney, as the representative of the State, to file a petition for the appointment of an appraiser; in fact, I consider it his duty to do so in proper case. It has been held to be primarily the duty of the administrator or executor, or the person charged with the payment of the tax, to do this, and that the power given the County Judge or State's Attorney to act in the premises was not intended to relieve the personal representative of this obligation. *Frazer v. People*, 3 N. Y. Supp. 134.

There are two questions, then, involved: First, when, under Section 11, the representative of the State can apply for the appointment of an appraiser to fix the value of the property, with a view to having fixed and assessed the amount of the tax. Second, when can the State's Attorney proceed under Sections 15 and 16 to the collection of the tax so ascertained and assessed?

The matter of the appraisement is a mere incident to

the collection or payment of the tax. It is the method provided by statute for ascertaining the amount due. Under Section 11, in my opinion, any party interest, including the State, at any time, may apply for the appointment of an appraiser, with a view to ascertaining the extent and value of the estate and having the tax assessed.

It is to the second proposition, involving action under Sections 15 and 16, that I shall devote the most of my consideration; that is, whether prior to the six months' period fixed for discount and rebate, any presumption of refusal or neglect to pay the tax arises so that the parties may be subjected to the payment of costs under the provisions of Section 16.

Section 3 is as follows:

"All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes are not paid: *Provided*, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax."

This provision makes the tax due and payable at the death of the decedent, and if it was not qualified by the further provision relative to the rebating or interest and allowance of discount if paid within six months, there would be no difficulty in construing it.

In my opinion, the purpose of rebating the interest and allowing the discount is to encourage the early and voluntary payment of the tax. There can be no other possible reason for the allowance of this discount. If this be the intention of the Legislature, it seems to me the further intention is clearly implied, that, until the

period fixed by it for voluntary payments at discount has elapsed, no proceeding for the collection of the tax (as distinguished from its assessment) can be instituted. To hold otherwise, and that the State's Attorney could immediately after the death of the decedent proceed to enforce the collection of the tax, would be to do away with the reason of the Legislature for allowing the discount. This has been the construction of the New York Courts of a similar statute, which, because of the fact that our statute follows their statute, is entitled to considerable weight upon questions of construction.

The Court, in the case of *Frazer v. People*, 3 N. Y. Supp. 134; 6 Dem. 174, said:

"I think that Section 4 of the Act of 1887, read with its other provisions, indicates the intention to be that while tax is due and payable from the death of the decedent for some purposes—among others, that proceedings may be had to appraise and ascertain the value of the estate subject to the tax, and the amount of the tax, and that interest may be charged from the death of the decedent in case the tax is not paid within eighteen months thereafter—yet as the section referred to provides that if the tax is paid within eighteen months no interest shall be charged and collected thereon, it would seem that no proceeding can be instituted to enforce the payment of the tax within eighteen months. See the *Matter of the Estate of Mrs. Astor* (20 Abb. N. C. 405-415). It was intended, I believe, to enable the representative of the decedent, under many contingencies that may arise in the settlement of the estate, to ascertain the amount of the tax and for that purpose time may be necessary, to determine the indebtedness of the decedent and the like.

It is claimed by the district attorney that the citation in this matter is to show cause 'why the tax should not be ascertained' as well as why it should not be paid. That is so, but I do not think costs may be awarded except 'after the refusal or neglect of

the persons interested in the property liable to said tax to pay the same.'"

Mr. Dos Passos, in discussing this proposition, says:

"The executor, administrator, or any other party interested in the estate liable to the tax, may also under this act institute proceedings to have the property assessed or valued for the purpose of ascertaining the amount of tax due. * * * But it will be observed that this proceeding is of an entirely different nature from the one directed to be begun by the district attorney, which is, primarily, to compel payment of the tax from the parties who have refused or neglected to pay the same."

Dos Passos, Inheritance Tax Laws (2d ed.), Sec. 66, p. 397.

It is, therefore, in my opinion, the duty of the State's Attorney, generally, as circumstances may require, in the matter of appraisement and ascertainment of the tax, to represent the State, and in these matters he may proceed at any time after the death of the decedent, and for these services he can be allowed no compensation other than that paid him annually from the State Treasury.

If, after the expiration of six months, the State's Attorney shall have proper cause to believe" that a tax is due and unpaid, and the same has been assessed, then he may proceed under Section 16, and the Court may fix a reasonable attorney fee to be taxed as costs against the defendant.

I am aware that an opinion to the State's Attorney of Madison County, as published at page 611 of the Report of the Attorney General, 1910, states a rule which is in conflict with this opinion.

I have, since our interview in this matter and the receipt of your letter, given these questions careful consideration and have reached the conclusion that the con-

struction of the statute arrived at in this opinion is the correct one, and the one that should be adopted by this department, and that the law as herein stated is in harmony with the decisions of the courts and the intention of the Legislature, and have extended this opinion somewhat in order that my reasons for reaching such conclusion may clearly appear.

Opinion to State's Attorney, April 17th, 1911.

544. Interest—Runs Until Tax Is Paid.

The Inheritance Tax Act provides for the payment of interest on inheritance taxes and the right to collect such interest cannot be effected by the failure of the County Judge or other officers to file a statement showing that the estate is taxable.

It is claimed that no interest is due upon the amount of the inheritance tax because neither the County Judge nor the Clerk filed a statement in writing with the County Treasurer showing this estate to be probably taxable.

This contention is, in my opinion, without merit. The liability to interest on the amount of the tax is not dependent upon the act of the County Judge or Clerk in reporting estates probably subject to the tax. On the contrary, the statute specifically provides that the tax shall be due and payable at the death of the decedent, with interest at six per cent., for the time the same remains unpaid, if not paid within six months. When the liability to pay interest has been incurred it is chargeable from the time the tax accrued. *Matter of Davis*, 149 N. Y. 539.

It seems to me that this contention is a plea of ignorance of the law. The Inheritance Tax Act places upon the legal representatives of a decedent the duty of paying the tax in the first instance and makes them person-

ally liable therefor. They are in a position to know before any other person whether an inheritance tax is due. To say that they did not know any tax was due, because the Judge and Clerk failed to report the probability of it to the Treasurer is nothing more than to say that they were ignorant of the law, which is no excuse to relieve them from the payment of interest. *Matter of Platt*, 29 N. Y. S. 396. In my opinion, interest should be collected on the tax in this case if that is the only contention against it.

Opinion to Special Assistant, August 27th, 1909.

545. Deductions—When Expense for Monument Cannot Be Deducted.

An Inheritance Tax Appraiser should determine the fair market value of the estate at the time of decedent's death, and for that purpose should consider claims against the estate which were contracted for by decedent; moneys expended for monument.

You state that there are a number of claims against the estate which the administrator has paid, but which were never filed or passed on by the County Court. You submit the question whether it is proper to allow these payments in making your appraisement for inheritance tax purposes, and also whether it is proper to allow a claim for a monument.

In reply will say that it is the duty of the appraiser to fix the fair market value of the estate, as of the time of the decedent's death.

Dos Passos, in his work on Inheritance Tax, deduces the principle that where such is the duty of the appraiser, it is within his powers and duty to consider evidence relating to the debts of the decedent, which are or may become liens upon his estate. Such debts, however, are lim-

ited to those which had their inception during the lifetime of the decedent. It is, therefore, my opinion that you, as appraiser, for inheritance tax purposes, should hear the evidence with reference to claims against the estate, and from all the evidence with reference thereto, determine the fair market value of it. However, I do not think that claim for a monument should be allowed or considered by you to affect the value of the estate, unless a contract with reference thereto was made by the decedent during his lifetime. The reason for this is that if the heirs or administrator, after the decedent's death, contracted for this monument, claim for the same was not a debt due or to become due from the estate and contracted for by the decedent.

Opinion to State's Attorney, January 15th, 1909.

546. Appraiser Cannot Employ Lawyer and Charge His Services Against State.

An appraiser appointed under the Inheritance Tax Law is not entitled to compensation for fees paid to special counsel.

You have called my attention to the provisions of the Inheritance Tax Act, with reference to the requirement that County Treasurers make semi-annual reports. If, upon such reports, it appears that appraisers in inheritance tax proceedings have employed special attorneys for their instruction and advice as to such proceeding, and that such attorneys have been paid for services rendered, out of the funds collected as inheritance taxes in particular estates involved, you submit the question whether the Auditor of Public Accounts or the State Treasurer is invested with authority to object to the payments so made and to refuse to allow credit for the same to Treasurers so reporting. You also ask to be advised as to whom

such a matter should be referred for necessary action in the premises.

In reply will say that upon the receipt of your communication, I instituted an investigation, with the result of finding that in a number of instances appraisers in inheritance tax proceedings have reported among their expense items fees paid to attorneys employed by them in such proceedings. Such reports being approved by the County Judge, who thereupon entered his orders and issued his certificates to put into effect such approval, has resulted in the payment, to the attorneys so employed by the inheritance tax appraiser, of moneys collected for inheritance taxes.

I am of the opinion that payments to attorneys employed by inheritance tax appraisers, when sought to be charged against inheritance tax funds, is unwarranted and cannot be justified. The duties of the inheritance tax appraiser and his compensation are defined in Section 11 of the Inheritance Tax Act, which provides that appraisers shall be appointed,

"whose duty it shall be forthwith to give such notice by mail, to all persons known to have or claim an interest in such property, and to such persons as the County Judge may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the County Judge, to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, to said County Judge, with the depositions of the witnesses examined and such other facts in relation thereto and to said matters as said County Judge may, by order, require to be filed in the office of the clerk of said County Court, and from this re

port the said County Judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such appraisement or assessment on paying or giving security satisfactory to the County Judge to pay all costs, together with whatever taxes shall be fixed by said Court. The said appraiser shall be paid by the County Treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisement, as by law provided, on the certificate of the County Judge, such compensation as such Judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him."

The rule is that the compensation of an officer of this kind, if he shall have any, must be provided for in the statute, and that only such compensation as the statutes provide for him is he entitled to receive. I am aware of no rule that can operate to extend the compensation of the inheritance tax appraiser, or the matters for which he is entitled to charge compensation, to other items than those specifically mentioned in the statute, which are,

"such compensation as such Judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him."

These are the only items payable to the appraiser and the County Judge must issue his certificate in regard to such payment before the County Treasurer is authorized to deduct the amount thereof from the tax collected.

The office of appraiser in inheritance tax proceedings, as I view it in the light of the duties to be performed, can present no circumstances in which the appraiser should be under the necessity of seeking his own private counsel as to such proceedings. He gives notice of the time and place where he will attend for the purpose of appraising the property, and may take the evidence of witnesses. Such proceeding is in the nature of a hearing in the matter of the appraisement and for that purpose the interested parties who are all entitled to be present may have counsel to represent them and to advise the appraiser. The interests of the public will be represented by the State's Attorney or the Attorney-General, and so the appraiser ought to expect to be fully advised by such counsel of the parties as to the state of the law upon any proposition likely to arise for his determination. Even in the event that counsel for the parties did not attend before the appraiser, I conceive that the appraiser may call upon the County Judge for advice in the premises.

In this view of the matter, the situation is not unlike that pertaining to the Master in Chancery as to whose fees it is the well settled law in a long line of cases that he cannot receive compensation except for those things specifically mentioned in the statute.

I therefore come to the conclusion that because the statute fails to provide that the inheritance tax appraiser may have compensation for legal counsel, that if an order shall be issued by a County Judge for the payment of the fees of counsel employed by an appraiser in such

proceeding, the issuance of such order would be, and is, an error and is, therefore, unlawful.

Opinion to State Treasurer, June 10th, 1910.

547. Tax—When Postponed and When Immediately Collectible.

1. Under the Inheritance Tax Act in force prior to July 1st, 1909, contingent estates could not be appraised for inheritance tax purposes until the contingency happened.

2. Under the Inheritance Tax Act of 1909, provision is made for compromising the amount of the inheritance tax in an estate in which the decedent died prior to July 1st, 1909.

3. In a case in which the decedent died subsequent to July 1st, 1909, no postponement of the tax is necessary in case of contingent estates but in such a case a tax is immediately imposed at the highest rate possible upon the happening of any of the contingencies depending upon the devise.

Under date of the 30th instant you have submitted for my consideration the case of a decedent who died testate, seized of real estate of the value of one hundred and twenty thousand dollars, devising the same to a son in fee simple on the following conditions:

1. Possession of the real estate not to be vested in the devisee until he attains the age of twenty-one, if the father lives to that period, but

2. If the father dies before the devisee attains the age of twenty-one then possession of the real estate to vest immediately in such devisee.

3. If that devisee die before attaining the age of twenty-one then the father to take a life estate in the real es-

tate with remainder in fee to the heirs of a deceased brother.

You say that in proceeding to collect the inheritance tax upon the succession to this estate you have met with difficulty in satisfactorily fixing the persons to be taxed and the amounts to be paid and ask to be advised as to the state of the law on this subject.

In reply will say that the devise to the son of the testator under the terms of the will, will not vest until he becomes twenty-one years of age, or earlier if his father dies before that time. In case the son dies before attaining the age of twenty-one the devise shifts to a life estate in the father (brother) with remainder to his collateral heirs, who are strangers of the blood to the testator. Therefore, the devise is contingent and ambulatory.

It cannot be determined with legal certainty at what time the devise will operate to vest either of the estates created in the will with reference thereto, because the vesting of title and possession under it is postponed until the happening of one of the contingencies mentioned.

It is for this reason that you are unable to determine the persons who are liable to pay the inheritance tax and the amount thereof.

If the decedent died prior to July 1st, 1909, as to which you have not stated the time of his decease, it will be one of the class of cases which fall under the rule of *People v. McCormick*, 208 Ill. 437, where the Court holds that to authorize the imposition of an inheritance tax there must be actual ownership and the possession of a title that can be conveyed.

Under the authority of this case, prior to July 1st, 1909, such a contingent estate as you have described could not be taxed until the contingency vesting the estate had happened. If, therefore, the case which you put falls within

the rule of the *McCormick case*, the estates created by the devise under consideration cannot be taxed presently but the imposition of the tax must be postponed until the happening of one of the contingencies named whereby title will become actually vested.

If the tax accrued under the Act of 1909, then Section 25 provides that there shall be no postponement but that the tax shall be immediately imposed at the highest rate possible upon the happening of any of the contingencies depending upon the devise.

In view of the legislative intention that the provision of the law should obviate the postponement of inheritance tax proceedings in such a case, it is clear that it is the further intention of the Legislature that a tax should be imposed in this case as if the condition had transpired whereby the fee of the real estate will pass to the heirs of the deceased brother who is mentioned, viz.: as if the son had died before attaining the age of twenty-one.

Such a proceeding, in my opinion, is clearly indicated by this statute and may be safely followed in this instance.

If any other contingency should happen, as mentioned in the will, whereby the title to the real estate will be vested in another person whose succession thereto is taxable at a lower rate than that of the heirs of the deceased brother, the statute further contemplates that the difference in the amount of the tax that would be paid by such person, and that which was actually paid at the time of the proceedings upon the supposed succession thereto of the heirs of the deceased brother, may be recovered.

Opinion to State's Attorney, March 31st, 1910.

548. Public Administrator Has No General Duty to Enforce Inheritance Tax Law. Public Administrator Not to Enforce Payment of Inheritance Taxes. Must Pay Tax on Estates in His Hands.

I have your favor of the 17th inst., stating that within the past few years persons in Carroll County have died leaving estates subject to the inheritance tax, prescribed by the Statutes of Illinois, but that no effort has been made to collect same, and you ask my opinion whether it is your duty as Public Administrator of the County to take steps toward the collection of these taxes.

In reply, permit me to call your attention to Section 11 of the Inheritance Tax Law (Hurd's Revised Statutes, 1908, paragraph 376, chapter 120), which provides that the County Judge, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as or whenever occasion may require, who shall proceed to appraise the property of the deceased.

When the tax is not paid as provided it is the duty of the State's Attorney (in counties of the first and second class) to enforce collection.

In my opinion it is no part of your official duty as public administrator to enforce the payment of the inheritance tax except as estates subject thereto come into your hands.

Opinion to Public Administrator, February 18th,
1909.

549. A Will Is Not an Asset Within the Meaning of Section Nine of the Inheritance Tax Act, and May Be Removed for the Purposes of Probate Without the Consent of the Attorney General and State Treasurer.

Under date of the 27th inst., you submit the question whether a will may be taken from a safety deposit box in a bank, standing in the name of a decedent, without giving the notice mentioned in Section 9 of the Inheritance Tax Act of 1909. You state:

“In reading the law today I see nothing in it that would prohibit us from allowing the heirs or the executor, if we know him, from opening in our presence, the box, if they saw fit, to take from it the will.”

In reply, will say that when a safety deposit box stands in the name of a deceased person, it is contemplated by Section 9 of the Inheritance Tax Act of 1909 that control, or partial control at least, of the cache, passes to the person or institution letting the box.

That person or institution is prohibited from making a delivery or transfer of securities, deposits or other assets of a decedent, so under its possession or control, unless the State Treasurer and Attorney-General consent thereto in writing; and these State officers are authorized to examine the contents of such a box. This amounts to prohibiting that person or institution from permitting such securities, deposits or other assets to pass out of such control, as he or it shall have in the premises, without the notice or consent.

A will is, of course, not an asset in any sense to be regarded as included in the “securities, deposits or other assets” with which this section of the act deals. It is a testamentary instrument bearing the evidence of the testator’s disposal of his property.

It is provided in paragraph 12 of chapter 148, Hurd's Revised Statutes, 1908, that any person or persons who have in possession a last will or testament of another for safe keeping or otherwise, shall immediately upon the death of the deceased deliver up the will to the County Court, under penalty for withholding the same.

Paragraph 2, chapter 3, of the same revised statutes, makes it the duty of the person named as executor of a last will and testament to cause the will to be proved and recorded or to present the will if refusing to accept the executorship.

Section 9 of the Inheritance Tax Act in no way interferes with a discharge of these duties when a will is enclosed in a safety deposit box standing in the name of the testator at his death. The will may be withdrawn from the box and its delivery and transfer to the Court of Probate, to be proved and recorded, is in no manner affected by Section 9.

That section relates to the delivery or transfer of securities, deposits or other assets, and the burden is upon the person or institution which has control or possession in any way of that property, to see that the provisions of the Inheritance Tax Act are carried out.

While the will may be, indeed must be, delivered without any notice or consent, as I view the law, yet no securities, deposits or other assets mentioned in the act may be delivered or transferred without such notice or consent.

Opinion, January 28th, 1910.

550. Widow's Award Is Taxable.

If the widow's award, taken in connection with other property received in an estate, amounts to more than \$20,000.00 all in excess of \$20,000.00 is subject to a tax.

"Is the widow's award exempt from taxation under the Inheritance Tax Law?"

While the Supreme Court of this State has never discussed this precise question, it has impliedly approved the practice of taxing the widow's award.

In the case of *Billings v. People*, 189 Ill. 422, the widow renounced the provisions made for her in the will and elected to take her dower and legal share under the statute. The County Court appointed an appraiser, fixing the fair market value of the estate for the purpose of assessing an inheritance tax.

Among other things, the widow's dower and award were assessed and a tax fixed upon the assessment.

While the Supreme Court does not discuss the question of the right to levy an inheritance tax on the widow's award, it nevertheless approves the finding of the County Court and affirms the order fixing the tax.

In view of this decision it is, therefore, the holding of this department that the widow's award is subject to the provisions of the Inheritance Tax Law and liable to an inheritance tax.

Replying to yours of the 29th ultimo., will say that as a general proposition is is the holding of this department that the widow's award is subject to the inheritance tax.

It is, therefore, my opinion that the award of five thousand dollars, to which you have referred, is to be considered a part of the inheritance which the widow received in the estate you have referred to and that if the widow's award, together with the remainder of the decedent's estate coming to the hands of the widow amounts to more than twenty thousand dollars, then, the excess so received by the widow over that amount must be taxed.

Opinion to State's Attorney, September 2d, 1910.

551. Refund of Tax Erroneously Paid.

Where inheritance tax has been paid and covered into the State Treasury, the Auditor of Public Accounts is not justified in drawing a warrant for such excess in the absence of an appropriation for that purpose.

I acknowledge receipt of your favor of the 17th inst., enclosing a letter from the County Treasurer of Cook County, together with a certified copy of an order of the County Court of Cook County directing the County Treasurer of said county to refund the sum of \$31.59 to Clotilde Hotz and the sum of \$31.59 to Maximilian Schmidt, erroneously paid by said Clotilde Hotz and said Maximilian Schmidt on account of the inheritance tax.

It appears from the correspondence and from the order that an inheritance tax was levied and assessed in the matter of the estate of Leonard Schmidt, deceased. It further appears that the tax, as levied and assessed by the County Court of Cook County was paid to the County Treasurer and was, by the County Treasurer, paid to the State Treasurer. After the payment of the tax to the State Treasurer it was discovered that certain real estate was erroneously appraised and assessed as the property of said decedent at the time of his death, while, as a matter of fact, said property was not subject to taxation under the Inheritance Tax Law.

On account of such erroneous appraisement and assessment, Clotilde Hotz and Maximilian Schmidt each paid the sum of \$31.59.

The question presented by the correspondence is, so far as it affects any official act to be performed by the Auditor of Public Accounts, as to whether or not you have any authority to draw a warrant on the State Treasurer for the restitution to the two claimants named

in the correspondence of the sum so found to have been paid erroneously by said claimants on account of the inheritance tax.

It may be conceded that the tax was erroneously levied and assessed. It may further be conceded that the tax was erroneously paid to the County Treasurer, and by him erroneously paid to the State Treasurer. In other words, it may be conceded that said claimants have a right to the refund of the amount so erroneously paid by them by reason of paragraph 375 of chapter 120, Hurd's Revised Statutes, 1909, the same being section 10 of the inheritance tax act of 1909, which provides:

“When any amount of said tax shall have been paid erroneously to the State Treasurer, it shall be lawful for him, on satisfactory proof rendered to him by said County Treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid, provided that all applications for the repayment of said tax shall be made within two years from the date of said payment.”

The money so paid by said claimants has been covered into the State Treasury.

It is a provision of our fundamental law that:

“No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on presentation of a warrant issued by the Auditor thereon.” (Section 17, Article IV of the Constitution.)

It cannot be maintained, I think, that section 10 of the inheritance tax act of 1909, above quoted, makes any appropriation to pay amounts erroneously paid into the State treasury on account of inheritance tax act.

The most that can be claimed under said section is, that the amounts so erroneously paid constitute valid

claims against the State, which may be paid on the warrant of the Auditor of Public Accounts when the Legislature shall have made an appropriation for such payment.

The question then is, as to whether or not the Legislature in 1909 made an appropriation to pay the amount of taxes levied and assessed under the inheritance tax act of 1909 and erroneously paid into the State treasury.

The only clause in any appropriation act which might be said in any way to bear upon this proposition is Clause 30 of Section 1 of the act to provide for the ordinary and contingent expenses of the State government, approved June 6, 1909, in force July 1, 1909 (Session Laws, 1909) (page 83), which reads as follows:

“To the State Treasurer, such sums as may be necessary to refund the taxes on real estate sold or paid on error and for overpayment of collector’s account under laws governing such cases, to be paid out of the proper funds.”

Upon a consideration of this clause of the appropriation act, it is my opinion that it does not relate to erroneous payments made under the inheritance tax act but relates to payments made under the general revenue act.

It is my opinion, therefore, that under the law as it now stands, you have no authority to issue a warrant on the State Treasurer for the payment of the two claims mentioned in the correspondence submitted by you.

Said claims have, I think, a valid claim against the State, but such claim cannot be paid until the Legislature shall have made provision for their payment by the enactment of an appropriation act.

Opinion to State Auditor, May 20, 1910.

552. Partnership Assets in Foreign State When Owned by Deceased Resident of Illinois.

The interest of a resident decedent in a partnership estate in a foreign estate should be taxed in this State under the inheritance tax law for its fair cash value at the time of death.

"A person died a resident of Illinois, who was a partner in a cattle ranch in another state; is his interest in the cattle on such ranch subject to the inheritance tax of Illinois?"

Replying thereto, I would state that under Section 1 of the Inheritance Tax Act, all property which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State at the time of his death shall be subject to an inheritance tax at the rates prescribed in the statute.

I assume that the decedent died intestate. Under the law, the death of said decedent dissolved the partnership. The surviving partner or partners will proceed to wind up the partnership and will pay and discharge the partnership by liabilities. After all the partnership liabilities are discharged, the assets will be divided among the surviving partners in proportion to their respective shares as fixed by the partnership agreement. If the partnership assets are personal property, then such personal property would pass, after discharging the debts and liabilities against it, in the foreign jurisdiction under the laws of the State of Illinois. That being the case, the interest of the decedent in the partnership estate should be taxed in this State under the Inheritance Tax Law for its fair cash value at the time of the death of the deceased partner.

Opinion to State's Attorney, March 26th, 1909.

CHAPTER XXX.

**FORMS—TAX LAW OF 1895 AS AMENDED IN 1901—COURT OF
CLAIMS' DECISION ON REFUND OF TAX.**

- 553. Form Composition Agreement.
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553. Form Composition Agreement.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE MATTER OF THE ESTATE } *Composition Agreement under Section
OF* } *26 of the Inheritance Tax Law of
JOHN JONES, DECEASED.* } *Illinois, in force July 1st, A. D. 1909.*

WHEREAS, the said decedent, John Jones, died testate on September 15th, A. D. 1907, a legal resident of the City of Chicago, County of Cook and State of Illinois, leaving him surviving, as his only heirs at law and next of kin, Mary Jones, his widow, and Margaret Smith, also known as Margaret Louise Smith, his granddaughter, the legal relationship stated being evidenced by proof of heirship made by the Probate Court of Cook County: that said Mary Jones was born on the day of, A. D., and is now living; that said Margaret Smith was born on the day of, A. D., and is now living; that there is no reasonable ground for a belief that either or both of them will decease prior to that expectancy stated in recognized tables of mortality to be their respective period of life;

AND WHEREAS, said decedent left a last will and testament (no co-

docs), which was duly admitted to probate in the Probate Court of Cook County, Illinois, and Letters Testamentary thereon issued by said Court to Richard Green and Joseph Green, both of said City of Chicago, as Executors, who have since been discharged from further duty as Executors;

AND WHEREAS, said Richard Green of Chicago, James Baldwin of Philadelphia, Pennsylvania, and Edward Webster of New York City, New York, were by said last will nominated Trustees of the residuary estate therein mentioned, and have accepted the trust so created by said will and are now acting as trustees thereunder;

AND WHEREAS, Mary Jones, widow, has accepted the provisions of the will; and no legal contest has been instituted questioning or attacking the validity of said will;

AND WHEREAS, inheritance tax proceedings in the matter of decedent's estate were regularly instituted by the County Judge of Cook County, Illinois, on, to-wit, the 15th day of November, A. D. 1907, by the appointment of an appraiser under the act to Tax Gifts, Legacies and Inheritances, etc., in force July 1st, A. D. 1895, and the amendments thereto;

AND WHEREAS, said appraiser proceeded with his appraisement and made written report to said County Judge as by law provided, which said report was filed with the Clerk of the County Court of Cook County, Illinois, in appraisement case No. 88686; that on, to-wit, the 29th day of December, A. D. 1907, said County Judge entered an Order approving said report and fixing the tax chargeable to the transfers and successions then ascertainable, and further fixed the net value of all property appraisable by reason of the death of said John Jones, and of all property owned by decedent at death, in the sum of One Million Dollars (\$1,000,000).

That the findings and order of said County Judge were and are so far as material in this proceeding, as follows:

Total net property owned by decedent at death, or appraisable by reason of his death, One Million Dollars (\$1,000,000.00).

(Net personal, \$250,000.00, and Net Real Estate, \$750,000.00.)

DISTRIBUTION FOR TAXATION.

	Value of Succession.	Exemption.	Rate.	Tax.
Albert Brown, stranger in blood by paragraph c, article 2 of will.	\$25,000.00	None	5%	\$1,250.00
Susan Moore, niece by paragraph d, article 2 of will.....	36,000.00	\$2,000.00	2%	680.00
Maurice Black, husband of a daughter of decedent, by arti- cle 3 of will.....	15,000.00	20,000.00	1%	None
Margaret Smith, age .. years, also known as Margaret Louise Smith, granddaughter.				
Life use of one-third of residuary estate which is limited by the fourth article of the will— present value	195,000.00	20,000.00	1%	1,750.00
Mary Jones, widow, age .. years; life use of two-thirds of resid- uary estate as limited by the fourth article of the will— present value	245,000.00	20,000.00	1%	2,250.00

AND WHEREAS, said order of tax so entered by said County Judge further found, as follows:

"That the residue of the estate of decedent after distribution of legacies, equals the sum of \$924,000.00, to which is chargeable the life estates of the widow and granddaughter. That the remainder and remainders in said residuary estate are transferred contingently and conditionally and are not indefeasibly vested.

It is therefore ordered that the tax on the succession to said residue, subject to the life estates thereinbefore described, and the remainder and remainders herein be and the same is hereby postponed, and it is ordered that the tax on said residue be imposed in the future according to law."

AND WHEREAS, the fourth article (residuary clause) of said will is in words and figures as follows:

(Set out provisions of will disclosing character of the limitation.)

AND WHEREAS, said Trustees, Richard Green, James Baldwin and Edward Webster, trustees, above described, are all and each of them now desirous of settling the remaining claims of the People of the State of Illinois upon or in respect to the transfer of or succession to all the property described and referred to in article four of said will, to-wit, all the rest, residue, remainder and remainders in said estate, not taxed in the appraisement aforesaid, and are desirous of settling the remaining claims of said The People, etc., to any tax thereon, which is now chargeable and hereafter payable under the laws of the State of Illinois, by settling and compounding all such taxes upon terms which are just and equitable; and it is desired by said trustees, that the property constituting said trust estate, together with the right to receive, take and hold said property under and by the terms of said will, and the laws of the State of Illinois, be granted full and complete discharge on account of all liability for inheritance taxes by and upon the payment of a sum of money hereinafter fixed in this composition agreement in pursuance of the law in such case made and provided:

WHEREAS, all life tenants are living at the time of the execution of this instrument, and

WHEREAS, no estates or interests unappraised or untaxed in the appraisement proceeding have since indefeasibly vested nor have the beneficiaries become known or can they be identified.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, and by virtue of the powers and authority granted by the provisions of Section 26 of the Inheritance Tax Law in force July 1st, 1909:

IT IS HEREBY AGREED AND SETTLED UPON, that all inheritance tax and taxes and interest thereon, on the succession or successions to, right to receive, take and hold all and every part and parcel of the property on which the tax was postponed by the County Judge's Order of Tax entered on said 29th day of December, A. D. 1907, be and the same is hereby determined, compounded, settled and adjusted at the total sum of Nine Thousand Six Hundred Eighty Dollars (\$9,680.00).

This composition and settlement being determined by subtracting the total present value of the life estates charged to the residuary estate, from the total value of the residuary estate, the difference or remainder (constituting the untaxed property) being assumed to be the subject of a transfer, by the exercise of the power created in the widow, to one ultimate taker in the lineal line of descent from her and taxing such succession at 2 per cent. without exemption, or discount for immediate payment.

Which said sum of \$9,680.00 it is mutually agreed shall be, and is

hereby, determined a just and equitable sum of money to be received by the State of Illinois, its officers and agents, in full payment, settlement and discharge of all inheritance or succession taxes and interest thereon, which are payable or which, but for this agreement, might at any time hereafter become due and payable to the State of Illinois, or its officers or agents in its behalf, under and by virtue of the laws thereof, upon or in respect to the inheritance or successions to the property or estate of the above named decedent, and upon the right to receive, take and hold any of said property under the terms and provisions of the will of said decedent, and under the powers of appointment in said will created, which is hereinabove referred to as compromised, and which said successions and taxes and interest thereon have become fully settled and compounded and adjusted by the execution of this compromise agreement upon the payment of the said sum of \$9,680.00 to the County Treasurer of Cook County, Illinois, as provided by Section 26 of the Act to Tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in Certain Cases, etc., in force July 1st, A. D. 1909;

And the said State Treasurer of Illinois, by and with the consent of the said Attorney General of said State, expressed in writing, hereby grants full and complete discharge to said trustees upon the payment by them to the County Treasurer of Cook County, Illinois, of the amount of \$9,680.00.

IN WITNESS WHEREOF, the said Richard Green, James Baldwin and Edward Webster, acting as and in their capacity of trustees under the will of John Jones, deceased, and the Hon., as State Treasurer of Illinois, by and with the consent of the Hon., as Attorney General of the State of Illinois, who evidences his consent hereto in writing by joining in the execution hereof, have signed and acknowledged the execution of these presents in triplicate, this day of, A. D. 1912.

..... (L. S.)

..... (L. S.)

..... (L. S.)

..... (L. S.)

As State Treasurer of Illinois.

Approved this day of, A. D. 1911.

.....
Attorney General of the State of Illinois.

Recommended by

.....
Inheritance Tax Attorney of Cook County, Illinois.

553a. Petition for Appeal from County Judge's Order of Tax.

IN THE COUNTY COURT OF COUNTY.

STATE OF ILLINOIS, _____ ss.
COUNTY OF

IN THE MATTER OF THE ESTATE }
OF } No.
JOHN JONES, DECEASED.

PETITION PRAYING APPEAL: AND ORDER.

To the Honorable,

Judge of the County Court of County.

Your petitioners, JOHN DOE and RICHARD ROE, executors of the last will and testament of John Jones, deceased, respectfully represent that Your Honor did, as County Judge, on December, A. D., enter an order of tax and approve the Appraiser's report in the appraisement of the estate of said decedent, John Jones (appraisement No. 7537), which said order identified and determined the relationships of the beneficiaries taking by the will and codicils of said decedent, and of all persons, corporations and transferees taking property or interests appraisable by reason of the death of said decedent; and determined the values of the successions of and transfers and gifts to, said beneficiaries and persons, corporations and transferees, and the tax on the respective successions, transfers and gifts thereof, and that said order was entered on the recommendation of said Appraiser.

Your petitioners further represent that they are dissatisfied with the recommendations of the Appraiser, and are dissatisfied with all and each of the findings contained in said Order of Tax, above referred to.

Your petitioners insist that Your Honor, as County Judge, erred in said Order of Tax, in determining the relationships of the various beneficiaries and persons.

And erred in determining the value of the successions, transfers and gifts of each and all of the beneficiaries and persons.

And erred in determining the statutory exemption of each and all beneficiaries and persons.

And erred in fixing the amount of tax on each succession, transfer and gift and the rate of tax thereon.

And further, that Your Honor, as County Judge, erred in approving the report of the Appraiser; and erred in approving the values of the property appraisable by reason of the death of John Jones, as recommended by the Appraiser.

(Set forth in general terms the principal objections.)

Your petitioner states that the tax fixed in the order appealed from has been paid (or not paid, as the case may be).

Your petitioners, therefore, pray that an appeal be allowed to the County Court of County, from said Order of Tax, pursuant to the statute in such case made and provided.

.....
*Executors of the last will and testament
of John Jones, Deceased.*

(Or individual, as the case may be.)

553b. Order Allowing Appeal from County Judge's Order to County Court.

IN THE COUNTY COURT OF COUNTY.

STATE OF ILLINOIS, }
COUNTY OF } ss.

IN THE MATTER OF THE ESTATE }
OF } No.
JOHN JONES, DECEASED.

ORDER.

On the petition of John Doe and Richard Roe, executors of the estate of said decedent, John Jones, an appeal is hereby allowed to the County Court of County, Illinois, from the County Judge's Order of Tax entered December, A. D., in appraisement No., on filing with the Clerk of this Court on or before the day of, a good and sufficient bond in the sum of dollars, to be approved by the Court on or before the date last above named.

.....,
Judge of the County Court of County.

Entered (Date.)

554. Bond—Appeal to County Court.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE COUNTY COURT OF COOK COUNTY, ILLINOIS.

IN THE MATTER OF THE ESTATE }
OF }
JOHN DOE, DECEASED.

KNOW ALL MEN BY THESE PRESENTS, that of Chicago, Illinois, Executor of the Last Will and Testament of John Doe, deceased, as principal, and of New York, a surety company duly authorized to do business in Illinois, and execute, sustain, assume and pay liabilities or penalties as a bonding or surety company, with an officer and representative at Chicago, Illinois, as surety, are held and firmly bound to the People of the State of Illinois, in the penal sum of Twenty Thousand Dollars, for the payment of which, well and truly to be made, we and each of us do bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally and firmly by these presents.

Signed, sealed and delivered this day of,
A. D.

The condition of this obligation is such that whereas the Honorable John E. Owens, as County Judge of said Cook County, did, on the day of, A. D., enter an order on the report of his Inheritance Tax Appraiser in the above named estate approving the report of said Appraiser in all its findings (or except as

otherwise provided in said order), and fixing the amount, value, distribution and tax in said estate.

And whereas the tax so fixed and determined by said County Judge's order has been paid to the County Treasurer of County.

(OR—And whereas the tax so fixed and determined by said County Judge's order has not been paid.)

And whereas the said executor (or beneficiary, etc.) has prayed for and obtained an appeal from the appraisement and the order fixing tax aforesaid to the County Court of Cook County, Illinois.

Now, THEREFORE, if the said principal shall prosecute this appeal with effect, and moreover pay any and all taxes (if any) determined to be due, The People of the State of Illinois by reason of the death of said John Doe, deceased, on the parties, rights, interests, successions and transfers appraisable by reason of the death of said decedent (or if beneficiary appeals—pay all taxes determined to be chargeable against him), and pay the amount of the costs that may be rendered against him in this appeal, then this obligation to be void; otherwise to remain in full force and virtue.

(SEAL.)

*Executor of the Last Will and
Testament of John Doe, Deceased.*

..... SURETY COMPANY,
By C. BRAUNE, (SEAL.)
Resident Vice-President.
O. R. BRAUNE, (SEAL.)
Resident Assistant Secretary.

Approved this day of, A. D.

.....,
County Judge.

555. Order Appointing Appraiser.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

Before the Hon. John E. Owens, County Judge of Cook County.

IN THE MATTER OF THE ESTATE } INHERITANCE TAX
OF } APPRAISEMENT.
....., DECEASED. } NO.

It appearing that, by reason of the death of said deceased, there is property appraisable under the provisions of the statutes of this State relating to the taxation of gifts, legacies, inheritances, transfers, appointments and interests in certain cases; now, in pursuance of said statutes in such case made and provided:

IT IS HEREBY ORDERED, That
of the of, in said county, be and he is
hereby appointed appraiser herein for the purpose of fixing the fair
market value of the property appraisable by reason of the death of
said, alleged to have died a resident of the
County of, State of and that
said appraiser, before entering upon the duties of his office, take and

file on oath with the clerk of said court to faithfully and fairly perform the duties of such appraiser according to law.

IT IS FURTHER ORDERED, That said appraiser give ten days' notice in writing, by mail postpaid, to the County Treasurer of Cook County, Illinois, the Inheritance Tax Attorney for said Cook County and all other parties in interest, and that said appraiser make such investigation as is proper and necessary in the premises.

IT IS FURTHER ORDERED, That said appraiser make a just and true report of his proceedings, and return same to the County Judge of said Cook County; together with the evidence, documentary and oral, received by him; and statements taken germane to the subject-matter of said appraisement; and that he include in his said report, in addition to his findings of value, such recommendations relative to deductions, distribution for taxation or exemption, and such other facts and suggestions as are, in his judgment, material in the premises.

IT IS FURTHER ORDERED, That said appraiser prepare and present to said County Judge at the time of the return of his said report, a draft order fixing tax based upon his report, showing the clear cash value of all estates, annuities, life estates, estates for term of years, remainders, transfers, gifts, appointments and other interests taxable or exempt, and at what rate the same appear to be taxable under the law of this State, and the tax assessable.

AND IT IS FURTHER ORDERED, That, for the purpose of such appraisal, said appraiser is hereby authorized to issue subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning all matters germane to said appraisement.

AND IT IS FURTHER ORDERED, That said appraiser file with his said report a statement, under oath, showing the number of days actually and necessarily spent in making such appraisal, and his actual and necessary traveling expenses, together with the fees of said witnesses.

.....
County Judge.

556.

Oath of Appraiser.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Before the Hon. JOHN E. OWENS, County Judge of Cook County.

IN THE MATTER OF THE ESTATE
OF DECEASED. { Docket No.

I, appointed appraiser by the order of the County Judge of the County of Cook, do hereby swear that I will faithfully and fairly perform the duties of such appraiser according to law, and make a just and true report of my proceedings according to the best of my understanding.

Subscribed and sworn to before me, this day of
....., 191....

557. Appraiser's Notice of Hearing.

IN THE MATTER OF THE ESTATE
OF , DECEASED. } Docket No.

To all persons interested in said estate—

Having been appointed Appraiser in the above entitled matter, by the County Judge of the County of Cook, State of Illinois, I hereby notify you that on the day of , 190...., at o'clock in the noon of that day, at in the City of Chicago, Ill., I will proceed to appraise and fix the value of all property appraisable by reason of the death of the decedent, under and pursuant to the Inheritance Tax Laws of Illinois.

Dated this day of , 19.....

.....,
Appraiser.

558. Appraiser's Report.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Before the Hon., County Judge of Cook County.

IN THE MATTER OF THE ESTATE } INHERITANCE TAX
OF } APPRAISEMENT.
DECEASED. } No.

To the Honorable , County Judge.

I, the undersigned, who was on the day of , 19...., appointed appraiser to conduct an appraisement under and pursuant to "an Act to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases," etc., approved June 14, 1909, in force July 1, 1909, and to fix the fair market value of the property appraisable by reason of the death of said decedent, respectfully report as follows:

First. Forthwith after said appointment I proceeded to investigate all property appraisable as aforesaid, and gave notice by mail to all parties in interest in said appraisement of the time and place at which I would conduct said proceedings.

Service of said notice is evidenced by an affidavit marked Exhibit "A" hereto attached and made a part hereof.

Second. At the time and place in said notice stated, to-wit, at in the City of Chicago, Illinois, at the hour of m. on the day of , 19...., and thereafter from time to time, pursuant to adjournments regularly had, I proceeded to the appraisement of said property, and to take evidence in writing under oath of all witnesses produced concerning the subject-matter of said appraisement, which depositions are hereto attached and made a part of this report, together with all documentary evidence produced; and together with a statement of all independent investigations made by me; and

all general information germane to the subject-matter of said appraisement: all hereto attached.

And from said evidence and investigation I find that the fair market value of said property appraisable as aforesaid to be as hereinafter stated.

I also report, as shown by the documentary and other evidence herein contained, the various successions, estates, annuities, gifts, transfers, appointments, interests, etc., subject to taxation or exemption under the laws of this State in such case made and provided, and recommend their taxation and exemption according to the distribution and assessment hereinafter made.

559. Appraiser's Report—Schedule I.

ESTATE OF .....	....., DECEASED.
Date of decedent's death	.....
Residence of decedent	.....
Testate Intestate	.....
Record of will, Book	Page
Date of Letters	.....
Names, titles and addresses of legal representatives, etc.	..... ..... ..... ..... ..... .....
Names of persons appearing at appraisalment in behalf of estate	....................
Names of persons appearing in behalf of State of Illinois	....................

560. Appraiser's Report—Schedule II.

INVENTORY.

PROPERTY PASSING BY WILL OR INTESTATE LAWS.

Property.	Items.	Fair Market Value.
.....
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.....
.....

561. Appraiser's Report—Schedule III.

TRANSFERS, GIFTS, APPOINTMENTS, ETC.

Property.	Fair Market Value.
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562. Appraiser's Report—Schedule IV.

Estates, Beneficiaries, Appraised Fair and Relationship	Market Value.	Taxable Cash Exemption.	Tax Rec- ommended. Value.
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563. Appraiser's Report—Summary.

PERSONAL PROPERTY.	REAL ESTATE.
Schedule II, Page 1.....\$.....	Schedule II, Page 1.....\$.....
Schedule II, Page 2.....\$.....	Schedule II, Page 2.....\$.....
Schedule II, Page 3.....\$.....	Schedule II, Page 3.....\$.....
Schedule II, Page 4.....\$.....	Schedule II, Page 4.....\$.....
Schedule II, Page 5.....\$.....	Schedule II, Page 5.....\$.....
Schedule II, Page 6.....\$.....	Schedule II, Page 6.....\$.....
Schedule III, Page	Schedule III
 Total Personal Property	Total Real Estate.....\$.....
Total Personal Property.....	.....
DEDUCTIONS—Debts not secured on Real Estate .....	.....
Court Costs .....	.....
Executor's or Administrator's Fees .....	.....
Attorney's Fees .....	.....
Total Costs of Administration.....	.....
Total Deductions from Personal Property .....	.....
Excess of Debts over Personality.....	.....
Net Personal Property.....	.....
Total Real Estate.....	.....
Incumbrances on Real Estate.....	.....
Excess of Debts over Personality.....	.....
Total Deductions from Real Es- tate .....	.....
Net Value of Real Estate.....	.....
Clear Fair Market Value of Prop- erty found appraisable by reason of Decedent's Death	.....

564. Appraiser's Report—Schedule V.

SPECIAL FINDINGS AND CONCLUSIONS.

565

Certificate of Service of Process.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Before the Hon., County Judge of Cook County.

IN THE MATTER OF THE ESTATE } INHERITANCE TAX
OF } APPRAISEMENT.
..... DECEASED. } NO.

.....being duly sworn,
doth depose and say that he is the same person who was heretofore
appointed appraiser in the above entitled estate by the County Judge
of Cook County, Illinois; that on theday of,
19...., he duly gave notice by mail, postpaid, to the Treasurer of said
Cook County, to the Inheritance Tax Attorney for said Cook County,
and to the following named persons, viz.:

the same being the only parties in interest in said appraisement, that he would, as such appraiser, on the day of, 19..... at o'clock in the noon of that day, at

in the City of Chicago, Illinois, proceed to conduct an appraisement in said estate, under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies, inheritances, transfers, appointments and interests in certain cases.

Appraiser.

Subscribed and sworn to before me this, day of, A. D. 19.....

Notary Public in and for Cook County, Illinois.

566.

Appraiser's Report.

The foregoing, including the several schedules herein, together with Exhibits "A" and "B" hereto attached, constitutes a full and correct report of said appraisement as made by me pursuant to said order of appraisement.

Respectfully submitted this day of

Appraiser.

(Must be sworn to before Clerk or Notary.)

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

.....being duly sworn,
says that the foregoing report by him subscribed is a true and correct
report of the appraisement made by him in the matter of said estate,
and that he has faithfully and fairly performed the duties of such
appraiser, according to the best of his understanding.
.....

Subscribed and sworn to before me this day of
....., A. D. 19.....

Notary Public in and for Cook County, Illinois.

567.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Before the Hon., County Judge of Cook County.

County Judge's Order of Tax.

IN THE MATTER OF THE ESTATE }
OF } ORDER.
....., DECEASED.

It appearing from the report of
the Appraiser heretofore duly appointed to conduct an appraisement of
all property appraisable by reason of the death of said decedent, under
and pursuant to the statutes of this State relating to the taxation of
gifts, legacies, inheritances, transfers, appointments and interests, this
day presented and read: that said decedent died on the
day of and that due notice of the time and place
of said appraisement was duly given to all parties in interest in said
appraisement; and it further appearing that the said Appraiser has
appraised, at its fair market value, all property exhibited or made
known to the Appraiser.

IT IS, THEREFORE, ORDERED, That the said report of appraisement,
together with the recommendations for taxation and exemption made
by said Appraiser, be and the same is hereby approved, and that the
said report, together with the depositions of witnesses, exhibits, docu-
mentary evidence, statements and findings of said Appraiser, be
forthwith filed in the office of the Clerk of the County Court of Cook
County, and

IT IS FURTHER ORDERED, Upon said report that the cash value of the
several successions, estates, annuities, gifts, transfers, appointments,
interests, etc., subject to taxation or exemption by reason of the death
of said decedent under the laws of this State and the tax to which the
same are severally liable, be and the same are hereby assessed and
fixed as follows:

568. Order of Tax—Cont.

Estates, Beneficiaries, Relationship and Description of Property.	Appraised Fair Market Value.	Statutory Exemption.	Taxable Value.	Cash Rate.	Tax Fixed.
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.....
.....

569.**Order of Tax—Cont.**

IT IS FURTHER ORDERED, That the appraisement returned by the Appraiser in his said report, together with the cash value of the several successions, estates, annuities, gifts, transfers, appointments, interests, etc., subject to taxation or exemption by reason of the death of said decedent, and the tax thereon as assessed and fixed herein be entered in the public inheritance tax records of this county.

.....
County Judge.

570.**County Judge's Notice of Tax.**

STATE OF ILLINOIS, }
COUNTY OF COOK. }ss.

Before the County Judge.

IN THE MATTER OF THE ESTATE }
OF } NO.
....., DECEASED. }

You are hereby notified that I have, by order, made the day of 19...., assessed and fixed the cash value of such successions, interests, estates, legacies, transfers, gifts and property as you and each of you are entitled to receive by reason of the death of said decedent and the amount of tax to which the same is liable, pursuant to order of tax entered herein under an act to tax gifts, legacies, inheritances, transfers and interests in certain cases, and to provide for the collection of the same, approved June 14, 1909, in force July 1, 1909, as follows, viz.:

Beneficiary.	Cash Value.	Tax.
.....
.....
.....
.....
.....

You will please take notice that interest is also charged on this tax from date of death of decedent.

.....
County Judge.

To

**571. County Judge's Certificate of Mailing Notice
to Persons Taxed.**

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE MATTER OF THE ESTATE } No.
..... } Certificate of Mailing
..... } Notice of Tax Fixed.

I, Judge of the County of Cook,
in the State of Illinois, do hereby certify that on the day
of A. D. 191...., I sent by mail a notice, a copy of
which is hereto attached, to the following persons, being all the
parties known to be interested in all estates, annuities and life estates,
or terms of years growing out of said estate, and addressed as follows:

.....,
County Judge.

572. Inheritance Law of 1895 as Amended 1901.

TAX ON GIFTS, LEGACIES AND INHERITANCES.

1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, All property real, personal and mixed, which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the

death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county, for the use of the State; and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the State of Illinois or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes; and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear mar-

ket value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars, on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars: Provided That an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons or body politic or corporate

beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come in the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the People of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the County Judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the County Clerk of the proper county: Provided further, that such person shall make a full, verified return of said property to said County Judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years.

2½. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members. (By Amendment 1901.)

3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death

of the decedent and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes is not paid: Provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax, and in all cases where the executors, administrators, or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in Section 2 of this act for the payment of said tax, together with interest.

4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the excutor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts, to make an ap-

portionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county

where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritant (inheritance) tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid.

9. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of decedent or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof, otherwise the corporation forming such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable to such taxes.

10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee person or persons who have paid any such tax in error the amount of such tax so paid, provided that all applications for the repayment of said tax shall be made within two years from the date of said payment.

11. In order to fix the value of property of persons

whose estate shall be subject to the payment of said tax, the County Judge, on application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, to all persons known to have or claim an interest in such property, and to such persons as the County Judge may, by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the County Judge, to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, to said County Judge, with the depositions of the witnesses examined and such other facts in relation thereto and to said matters as said County Judge may, by order, require to be filed in the office of the clerk of said county court, and from this report the said County Judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such appraisement or assessment on paying or giving security satisfactory to the County Judge to pay all costs, together with whatever taxes shall be fixed by said court. The said Appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the

inheritance tax, as by law provided on the certificate of the County Judge, such compensation as such judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him.

11½. The fees of the clerk of the county court in inheritance tax matters in the respective counties of this state, as classified in the act concerning fees and salaries, shall be as follows:

In counties of the first and second class, for services in all proceedings in each estate before the county judge, the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the county judge, out of any money in his hands, on account of said tax. In counties of the third class, the Attorney General of (the) State may appoint an attorney, who shall be known as the "inheritance tax attorney", and whose salary shall be not to exceed three thousand dollars per year, payable monthly out of the state treasury upon warrants drawn by the auditor of public accounts, on vouchers approved by the Attorney General. In Counties of the third class, the clerk of the county court may appoint a clerk in the office of the clerk of said court, to be known as the "inheritance tax clerk", whose compensation shall be fixed by the County Judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned

into the county treasury. In addition to the above, the clerk of the county court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the county court, and in all appeals from the county court to the supreme court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the county court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the county court shall charge against and collect, from the person applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in other cases in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which now are, or hereafter may be allowed by law to the recorder of deeds for recording similar instruments.
(By Amendment 1901.)

12. Any Appraiser appointed by this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the County Judge shall dismiss him from such service.

13. The County Court in the county in which the real property is situated of the decedent who was not a resident of the State or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

14. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this State and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state.

15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the state's attorney of the proper county, in writing, of such refusal to pay said tax and the state's attorney so notified, if he has proper cause to believe a tax is due and unpaid shall prosecute the proceeding in the county court in the proper county as provided in Section 14 of this Act for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

16. The County Judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid.

17. Whenever the County Judge of any county shall certify that there was probable cause for issuing a summons and taking the proceedings specified in section fourteen of this act the State Treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

18. The Treasurer of the State shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record.

19. The Treasurer of each county shall collect and pay the State Treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the Auditor of Public Accounts on the first Monday in March and September of each year, stating for what estate paid and in such form and containing such particulars as the Auditor may prescribe; and for all such taxes collected by him and not paid to the State Treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent per annum.

20. The treasurer of each county shall be allowed to retain two per cent on all taxes paid and accounted for

by him under this act in full for his services in collecting and paying the same in addition to his salary or fees now allowed by law.

21. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option that may have been given by said treasurer for the payment of any tax under this act to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax and said receipt may be recorded in the clerk's office of said county in which the property may be situated in the book to be kept by said clerk for such purpose.

21½. When any person interested in any property in this state, which shall pass by will or the intestate laws of this state, shall deem the same not subject to any tax under this act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The County Court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon

said property, subject to appeal to the supreme court of the state by the county treasurer, or Attorney General of the State, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now, or may hereafter be, allowed by law in cases at law in the county court. (By Amendment 1901.)

22. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, that said lien shall be limited to the property chargeable therewith: and, provided further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate.

23. All laws or parts of laws inconsistent herewith be and the same are hereby repealed.

573.

"IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS.

October Term, A. D. 1910.

**JENNIE SANFORD GRIFFITH, Executrix of
the Estate of Merritt E. Sanford, Deceased,** }
vs.
STATE OF ILLINOIS. }

The evidence in this cause shows that Merritt E. Sanford, a resident of Rome, New York, died in Chicago October 29, 1906. His will was admitted to probate in Cook County on the petition of his sister, Jennie Sanford Griffith, to whom letters testamentary were issued as executrix, November 27th, 1906. Sanford died seized of real estate in Chicago valued at \$20,000. He was also

found to be the possessor of certain securities, which were found in a safe deposit vault in Chicago, where they had been deposited by decedent for safekeeping. These securities and their appraised values were as follows: Certificates of stock of Illinois corporations, \$21,575; certificates of foreign corporations, \$24,962.50; bonds issued by Illinois corporations, \$19,484.58; bonds issued by foreign corporations, \$38,910; and bonds of a railroad company organized under the law of Illinois and Iowa, of the value of \$9,100. He also left cash on deposit with certain Chicago banks, to the amount of \$1,194.76, and other personal effects and chattels in Cook County valued at \$1,523. The Inheritance Tax Appraiser appointed by the County Court of Cook County included in his appraisement of property all the property above mentioned. The County Judge of Cook County, upon such report and appraisement, assessed and fixed the Inheritance taxes, to be paid by the beneficiaries under the will, at \$1,423.25, and on April 26, 1907, the executrix paid to the County Treasurer of Cook County the sum of \$1,352.09, being the taxes so fixed, less five per cent. deducted, in accordance with the statute, on account of payment within six months after testator's death. Payment of this amount was made by check and upon the check the words "paid under protest" were endorsed by the attorneys of the executrix. Subsequently the money so paid was turned over to the State treasury by the County Treasurer of Cook County.

From the Order of the County Judge fixing the taxes, an appeal was prayed by the executrix to the County Court of Cook County, where, after a hearing on May 17, 1909, the stocks and bonds of foreign corporations were held by that Court not subject to an Inheritance Tax under the laws of this State.

The same Court found that the taxes, on the remainder of the property included in the Appraiser's report should be \$900, and ordered that the County Treasurer refund to the executrix the sum of \$497.09, being the difference between the amount previously fixed by the County Judge and the amount as finally fixed by the County Court, less the discount in both cases. From this judgment of the County Court of Cook County an appeal was taken by the People to the Supreme Court of Illinois, which said Court, on June 29, 1910, affirmed the judgment of the County Court as to the amount of Inheritance Tax to be paid by the beneficiaries in this estate, but reversed that part of the judgment ordering the repayment by the County Treasurer of the said \$497.09.

The construction of Section 10 of the Inheritance Tax Act was involved in this case. This section provides that when any amount of the inheritance tax 'shall have been paid erroneously to the State Treasurer, it shall be lawful for him, on satisfactory proof rendered to him by said County Treasurer of said erroneous payments, to refund and pay to the executor, administrator or trustee, person or persons, who have paid any such tax in error, the amount of such tax so paid, provided that all applications for repayment of said tax shall be made within two years from the date of said payment.' In reference to this section, the Supreme Court held that it was not the intention of this section to authorize the County Treasurer to repay taxes erroneously paid to him but that the State Treasurer, upon proper proof, was to refund such amounts. To secure such a refund of the said \$497.09, now covered into the State Treasury, is the object of the claimant in filing her claim in this Court.

It is a well established principle of law in Illinois that there can be no recovery back of taxes erroneously or illegally paid, unless the same were paid under actual duress or compulsion. *Yates v. Insurance Co.*, 200 Ill. 202, and cases cited.

Upon the check by which payment of the taxes in question was made, the endorsement of the words "paid under protest," obviously did not amount to payment under duress or compulsion. Therefore, if recovery can be had in this cause, it must be had under Section 10, above referred to, which Section makes special provision for repayment in case of erroneous payments in the matter of an inheritance tax.

The difficulty encountered in this regard, however, is the requirement of said Section 10 that application for repayment must be made within two years from the date of payment. In this case, payment was made to the County Treasurer April 26, 1907, and the two years' limitation therefore had run April 26, 1909. The evidence further shows that neither during that period, nor afterward, was any application made to the State Treasurer for repayment, either by the County Treasurer of Cook County, or the claimant, and the question therefore arises whether claimant is barred of recovery in this cause by limitation.

Section 10, referred to above, is somewhat vague and uncertain as to the manner in which application for repayment is to be made or as to the person by whom or to whom such application is to be made. As conditions precedent to repayment, two incidents are to concur: First, the County Treasurer is to render to the State Treasurer satisfactory proof of the erroneous payment, and, secondly, an application is to be made for repay-

ment, but whether application is to be made by the payer to the County Treasurer, by the payer to the State Treasurer, or by the payer to the County Treasurer and then by the County Treasurer to the State Treasurer, is not at all evident from the context.

It would seem to be the most natural method, however, for the person who had erroneously paid the tax to the County Treasurer to apply for repayment to the very same officer to whom payment in the first instance was made and that the County Treasurer, who is presumed to have paid this erroneous tax to the State Treasurer, would thereupon make proof of the erroneous payment to said State Treasurer and the latter officer then make payment.

Again under Section 10 referred to, repayment is to be made by the State Treasurer upon satisfactory proof being made to him by the County Treasurer, of the erroneous payment. It is unlikely that the County Treasurer would render such proof unless application were first made to him for repayment by the party erroneously paying the tax, notice of the erroneous payment being thus brought to his attention, and it is not unreasonable to suppose that this is the application which is intended should be made within the two years' period.

There is no definite direction in Section 10 as to this matter of application and there is nothing in the section to indicate that the application is to be accompanied by any formality. In this case, at the time the tax was paid, claimant expressed protest by endorsing the same on the check. This protest was followed by an appeal by the claimant, from the Order of the County Judge, fixing the tax, and by the time the County Court rendered its opinion that part of the tax was illegal, the limitation

had run. There was no laches or lack of diligence on the part of the claimant. She was protesting against the payment all the time and was seeking relief from the same by the only legal remedy at hand, following her remedy to the Supreme Court of the State.

Her acts and conduct in the matter constituted a constructive application of the very strongest kind and was of a continuing character.

From all the facts in this case, it is the opinion of this Court that not only as a matter of equity and justice is claimant entitled to an award, but such an award is also in conformity with law. Her claim for \$497.09 is therefore hereby allowed."

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